S. Hrg. 99-600 Pt. 2

MISCELLANEOUS CONVEYANCES, TRANSFERS, AND BOUNDARY MODIFICATIONS PERTAINING TO PUBLIC LANDS

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 1021; H.R. 1795; S. 1568; S. 1617; S. 1638; H.R. 1593; S. 1690; S. 1888; S. 1911; S. 1963; S. 2031; S. 2091; H.R. 850; and H.R. 1740

MARCH 4, 1986

PART 2

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CONTENTS

Page
S. 1021 ... 3
H.R. 1795 ... 5
S. 1568 ... 7
S. 1617 ... 14
S. 1638 ... 16
H.R. 1593 ... 18
S. 1690 ... 20
S. 1888 ... 22
S. 1911 ... 27
S. 1963 ... 30
S. 2031 ... 33
S. 2091 ... 35
H.R. 850 ... 37
H.R. 1740 ... 40

STATEMENTS

Astor, Lawrence, chairman, Reno Sparks Indian Colony ... 231
Breaux, Hon. John B., a U.S. Representative from the State of Louisiana ... 166
Bingaman, Hon. Jeff, a U.S. Senator from the State of New Mexico ... 48
Buckley, James J., Acting Assistant Commissioner, Office of Real Property, Federal Property Resources Services, General Services Administration ... 123
Bumpers, Hon. Dale, a U.S. Senator from the State of Arkansas ... 42
Cochran, Hon. Thad, a U.S. Senator from the State of Missiscippi ... 103
Dawson, Robert K., Assistant Secretary of the Army (Civil Works), Department of the Army ... 63
Domenici, Hon. Pete V., a U.S. Senator from the State of New Mexico ... 82
Dressler, Francis, vice chairman, Reno Sparks Tribal council ... 271
Garn, Hon. Jake, a U.S. Senator from the State of Utah ... 126
Garner, Carl, resident engineer, Army Corps of Engineers, Greers Ferry, AR ... 70
Goldwater, Hon. Barry, a U.S. Senator from the State of Arizona ... 109
Habicht, F. Henry, II, Assistant Attorney General, Land and Natural Resources Division, Department of Justice ... 150
Hatfield, Hon. Mark O., a U.S. Senator from the State of Oregon ... 121
Hawkins, Hon. Paula, a U.S. Senator from the State of Florida ... 119
Hecht, Hon. Chic, a U.S. Senator from the State of Nevada ... 1, 48
Johnston, Hon. J. Bennett, a U.S. Senator from the State of Louisiana ... 162
Jones, Jim, attorney general, State of Idaho ... 183
Lattman, Dr. Laurence H., president, New Mexico Institute of Mining and Technology ... 90
Laxalt, Hon. Paul, a U.S. Senator from the State of Nevada ... 57
Lemon, Becky, Reno Sparks Indian Colony ... 274
Long, Hon. Russell B., a U.S. Senator from the State of Louisiana ... 179
MacCleery, Douglas W., Deputy Assistant Secretary, Natural Resources and Environment, Department of Agriculture, on:
  H.R. 850 ... 58
  S. 1888 ... 79
  S. 2091 ... 114
  S. 1617 ... 148
McCall, Gere, coordinator to the National Advisory Council, Keep America Beautiful, Inc ... 319
Moore, Hon. W. Henson, a U.S. Representative from the State of Louisiana ... 181

Page
Parker, James M., Associate Director, Bureau of Land Management, Department of the Interior, on:
  S. 1568 49
  H.R. 850 61
  S. 1888 73
  S. 1963 ..... 82, 92
  S. 1021/H.R. 1795 98
  S. 1638/H.R. 1593 107
  S. 2091 112
  H.R. 1740 116
  S. 1617 131
  S. 2031 172
Powers, Roger W., president, Keep America Beautiful, Inc 321
Sampson, Wayne, natural resources planner, Reno Sparks Indian Colony 265
Schrinar, Howard M., Commissioner of Public Lands, State of Wyoming 202
Simpson, Hon. Alan K., a U.S. Senator from the State of Wyoming 161
Spaeth, Nicholas J., attorney general, State of North Dakota 192
Stevens, Jan, supervising deputy attorney general, State of California 223
Van de Kamp, John K., attorney general, State of California 226
Wallop, Hon. Malcolm, a U.S. Senator from the State of Wyoming 128
Watson, Edward S., mayor, Lake Charles, LA 288
Wolkins, Donald W., director, real estate operations, Upland Industries Corp., Salt Lake UT, as presented by Charles Peck, Assistant Director 283

APPENDIX

Additional material submitted for the record 327

MISCELLANEOUS CONVEYANCES, TRANSFERS, AND BOUNDARY MODIFICATIONS PERTAINING TO PUBLIC LANDS

TUESDAY, MARCH 4, 1986

U.S. Senate, Subcommittee on Public Lands, Reserved Water and Resource Conservation, Committee on Energy and Natural Resources

Washington, DC.

The subcommittee met, pursuant to notice, at 10:02 a.m., in room SD-366, Dirksen Senate Office Building, Hon. Chic Hecht, presiding.

Present: Senators Hecht, Wallop, Domenici, Johnston, Bumpers, and Bingaman.

Also present: Tony Bevinetto, professional staff member; and Thomas B. Williams, professional staff member for the minority.

OPENING STATEMENT OF HON. CHIC HECHT, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator Hecht. Good morning, ladies and gentlemen. This morning the Subcommittee on Public Lands, Reserved Water and Resource Conservation will hear testimony on the following bills:

S. 1021 and H.R. 1795, to exempt certain lands in the State of Mississippi from a restriction set forth in the act of April 21, 1806;

S. 1568, to declare that the United States holds certain lands in trust for the Reno Sparks Indian Colony;

S. 1617, to provide for more effective management of lands of the United States which are subject to conflicting claims or disputes and to require the Secretary of the Interior to report annually thereon;

S. 1638 and H.R. 1593, to direct the Secretary of the Interior to release on behalf of the United States certain restrictions in a previous conveyance of land to the town of Jerome, AZ;

S. 1690, for the transfer of certain interests in lands in Dona Ana County, NM, to Dona Ana County, NM, for the use as a fairgrounds;

S. 1888, to provide for a program of cleanup and maintenance on Federal public lands, national parks, recreation areas, and for other purposes;

S. 1911, to direct the Administrator of the General Services to release, on behalf of the United States, certain conditions and reservations contained in a conveyance of land to the State of Utah;

S. 1963, to direct the Secretary of the Interior to convey certain interests in lands in Socorro County, NM, to the New Mexico Institute of Mining and Technology;

S. 2031, to authorize the Secretary of the Interior to release restrictions on certain property located in Calcasieu Parish, LA, and for other purposes;

S. 2091, to amend the provisions of the Federal Land Policy and Management Act of 1976 relating to the acquisition of public lands;

H.R. 850, to modify the boundary of the Humboldt National Forest in the State of Nevada, and for other purposes; and

H.R. 1740, to direct the Secretary of the Interior to release a reversionary interest in certain lands in Orange County, FL, which were previously conveyed to Orange County, FL. I will place a copy of each of these bills in the hearing record.

[The texts of the bills follow:]

II

99th CONGRESS
1st Session

S. 1021

To exempt certain lands in the State of Mississippi from a restriction set forth in the Act of April 21, 1806.

IN THE SENATE OF THE UNITED STATES

April 26 (legislative day, April 15), 1985

Mr. Cochran introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To exempt certain lands in the State of Mississippi from a restriction set forth in the Act of April 21, 1806.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the restriction set forth in the proviso in section 5 of the Act of April 21, 1806 (2 Stat. 401) shall not apply to—

(1) the land conveyed by the Yazoo Mississippi Valley Railroad Company to the City of Natchez by a deed dated June 20, 1945, and recorded on page 177 of deed book 5-J in the records of Adams County in the State of Mississippi; and

(2) the land conveyed by the City of Natchez to Sim C. Callon by a deed dated June 12, 1984, and recorded on page 402 of deed book 16–J in the records of Adams County in the State of Mississippi.

○

99TH CONGRESS
1ST SESSION

H. R. 1795

IN THE SENATE OF THE UNITED STATES

NOVEMBER 5 (legislative day, NOVEMBER 4), 1985

Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To exempt certain lands in the State of Mississippi from a restriction set forth in the Act of April 21, 1806.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the restriction set forth in the proviso in section 5 of the Act of April 21, 1806 (2 Stat. 401) shall not apply to—

(1) the land conveyed by the Yazoo Mississippi Valley Railroad Company to the City of Natchez by a deed dated June 20, 1945, and recorded on page 177 of deed book 5–J in the records of Adams County in the State of Mississippi; and

(2) the land conveyed by the City of Natchez to Sim C. Callon by a deed dated June 12, 1984, and recorded on page 402 of deed book 16–J in the records of Adams County in the State of Mississippi.

Passed the House of Representatives November 4, 1985.

Attest: BENJAMIN J. GUTHRIE,
Clerk.

II

99TH CONGRESS
1ST SESSION

S. 1568

To declare that the United States holds certain lands in trust for the Reno Sparks Indian Colony.

IN THE SENATE OF THE UNITED STATES

AUGUST 1 (legislative day, JULY 16), 1985

Mr. LAXALT (for himself and Mr. HECHT) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To declare that the United States holds certain lands in trust for the Reno Sparks Indian Colony.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Except as otherwise provided in section 2, all right, title, and interest of the United States in the lands described in subsection (b) of this section are hereby declared to be held by the United States in trust for the benefit and use of the Reno Sparks Indian Colony and are hereby declared to be part of the Reno Sparks Indian Colony.

(b) The lands referred to in subsection (a) comprise approximately 1,948.38 acres of publicland within Hungry

Valley, Washoe County, Nevada, and are described as follows:

Township 21 north, range 20 east, Mount Diablo baseline and meridian, section 4, 640 acres more or less, reservations, restrictions, and conditions, if any, rights-of-way and assessors either of record or actually existing on said premises.

Township 21 north, range 20 east, Mount Diablo baseline and meridian, section 9, 640 acres more or less, reservations, restrictions, and conditions, if any, rights-of-way and assessors either of record or actually existing on said premises.

Township 21 north, range 20 east, Mount Diablo baseline and meridian, section 16, 640 acres more or less, reservations, restrictions, and conditions, if any, rights-of-way and assessors either of record or actually existing on said premises.

Township 19 north, range 20 east, Mount Diablo baseline and meridian, beginning at a point on the north county road right-of-way fenceline described as being 1,268 feet east and 30 feet north of the west quarter corner of section 7 said point being at the intersection of the boundary fence between L.M. Christianson and A.L. Jensen, with said north county road right-of-way line;

thence north 0 degrees 8 minutes west 490.30 feet;

thence west 787.74 feet;

thence south 0 degrees 12 minutes west 490.30 feet to north county road right-of-way fence;

thence along said fenceline 373.16 feet;

thence north 104.35 feet to the north county road right-of-way fenceline 208.71 feet to the place of beginning, containing 8.38 acres more or less, beginning reservations, restrictions, and conditions, if any, rights-of-way and assessors either of record or actually existing on said premises.

Township 19 north, range 20 east, Mount Diablo baseline and meridian, beginning at the intersection of the east boundaryline of the west half of the southwest quarter of section 7 with the southline of Scott Street Road, said point being 30 feet south of the northeast corner of said west half of the southwest quarter;

thence south 89 degrees 35 minutes west and along the southline of said Scott Street Road 361.2 feet;

thence south and parallel with the east boundaryline of said west half of southwest quarter of section 7, 2,326.18 feet south to northline of Glendale Road;

thence south 64 degrees 30 minutes east along the northline of said Glendale Road 400 feet to the eastline of Glendale Road west half of southwest quarter of section 7;

thence north along east boundaryline 2,501 feet to the place of beginning containing 20 acres more or less, reservations, restrictions, and conditions, if any, rights of way and assessors either of record or actually existing on said premises.

SEC. 2. (a)(1) Except as otherwise provided in this section, nothing in this Act shall deprive any person of any right-of-way, mining claim, grazing permit, water right, or other right or interest which such person may have in the land described in the first section on the date preceding the date of enactment of this Act.

(2) Notwithstanding the last sentence of section 402(g) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2774, 43 U.S.C. 1752(g)), within thirty days after the date of enactment of this Act, the Secretary of the Interior shall cancel all grazing permits and leases on the following described land:

Township 21 north, range 20 east, Mount Diablo meridian, section 4 comprising 640 acres more or less in Washoe County, Nevada.

(b) Within one hundred and twenty days after the date of enactment of this Act, the Secretary of the Interior, in accordance with section 402(g) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2774, 43 U.S.C. 1752(g)), shall pay to the holder of any lease or permit canceled under subsection (a) of this section reasonable compensation, to be determined by the Secretary, for the adjusted value of any improvements which said holder constructed or placed on the land described in subsection (a)(2) of this section and cannot be removed. Such payment shall not exceed the fair market value of the terminated portion of the holder's interest therein.

(c) The Secretary of the Treasury is authorized and directed to pay to the Secretary of the Interior, out of funds in the Treasury of the United States not otherwise appropriated, such sums as the Secretary of the Interior may require to make the payments required under subsection (b) of this section.

(d) The grazing privileges exercised under any grazing permit or lease issued by the Secretary of the Interior on any of the following described lands located within the grazing unit known as the Paiute Canyon Grazing Allotment Range, Washoe County, Nevada, prior to the date of enactment of this Act shall not be affected by this Act, and shall continue to be subject to the terms and conditions of such permit or lease, and to the applicable rules, and regulations of the Secretary of the Interior:

Township 21 north, range 20 east, Mount Diablo baseline and meridian, section 9, 640 acres more or less.

Township 21 north, range 20 east, Mount Diablo baseline and meridian, section 16, 640 acres more or less.

(e) The grazing privileges exercised under any grazing permit or lease on the lands described in subsection (d) of this section shall continue to be administered by the Secretary of the Interior through the Bureau of Land Management in accordance with the rules and regulations governing grazing permits and leases on the public lands. Such grazing permits or leases may be canceled or modified by the Secretary of the Interior for failure to meet the terms and conditions of such permits or leases or for failure to abide by the applicable rules and regulations of the Secretary of the Interior. If a grazing permit or lease is so canceled, the Secretary of the Interior shall not issue a new grazing permit or lease covering the lands described in subsection (d) of this section.

(f) Grazing fees for the grazing permits and leases on the lands described in subsection (d) of this section shall continue to be payable by the holder of such permit or lease to the Secretary of the Interior at the prevailing rates. Notwithstanding any other provision of law, such fees shall be remitted by the Secretary of the Interior to the Reno Sparks Indian colony within thirty days after the date on which such fees are paid to the Secretary of the Interior.

(g) The grazing permits and leases on the lands described in subsection (d) of this section shall not be assigned or transferred to any person or organization other than the Reno Sparks Indian Colony.

SEC. 3. (a) Section 1 of the Act of August 9, 1955 (69 Stat. 539, as amended; 25 U.S.C. 415), is amended by inserting ", and lands held in trust for the Reno Sparks Indian Colony," immediately after "Twenty-nine Palms Band of Luiseno Mission Indians,".

(b) Section 164 of the Act of July 14, 1955 (42 U.S.C. 7474), shall be applied without regard to the provisions of the first section of this Act.

○

II

99TH CONGRESS
1ST SESSION

S. 1617

To provide for more effective management of lands of the United States which are subject to conflicting claims or disputes, and to require the Secretary of the Interior to report annually thereon.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10 (legislative day, SEPTEMBER 9), 1985

Mr. WALLOP (for himself, Mr. ANDREWS, Mr. ABDNOR, Mr. SIMPSON, Mr. LAXALT, Mr. BURDICK, and Mr. MELCHER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To provide for more effective management of lands of the United States which are subject to conflicting claims or disputes, and to require the Secretary of the Interior to report annually thereon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. It is the purpose of this legislation to obtain more effective management of public lands by providing for the speedy resolution of intergovernmental title disputes involving lands to which the United States asserts title, which interfere with effective administration or disposition of public lands.

SEC. 2. The Secretary of the Interior shall report by July 1, 1986, and annually thereafter, to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs on the status of negotiations for the settlement of any claims by States to lands administered by the Department of the Interior.

SEC. 3. Subsection (f) of section 2409a of title 28, United States Code, is amended by inserting ", except for an action commenced by a State," after "section" and by inserting after the first sentence the following: "Any civil action under this section by a State may be commenced regardless of when such action accrued." Such subsection is further amended by striking out "Such" and inserting in lieu thereof "For purposes of this subsection, an".

○

II

99TH CONGRESS
1ST SESSION

S. 1638

To direct the Secretary of the Interior to release on behalf of the United States certain restrictions in a previous conveyance of land to the town of Jerome, Arizona.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12 (legislative day, SEPTEMBER 9), 1985

Mr. GOLDWATER introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To direct the Secretary of the Interior to release on behalf of the United States certain restrictions in a previous conveyance of land to the town of Jerome, Arizona.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of the Interior shall release, by quitclaim deed or other good and sufficient instrument, on behalf of the United States, with respect to the land described in subsection (b) which was conveyed by the United States to the town of Jerome, Arizona, by a patent numbered 497894, all conditions on such a patent which required that such land be used for cemetery or park purposes.

(b) The land referred to in subsection (a) which was conveyed to the town of Jerome, Arizona, on November 8, 1915, by a patent numbered 497894, is all of the southeast quarter of the southeast quarter of section 30, township 16 north, range 3 east of the Gila and Salt River meridian, Arizona, containing forty acres.

○

II

99TH CONGRESS
1ST SESSION

H. R. 1593

IN THE SENATE OF THE UNITED STATES

NOVEMBER 5 (legislative day, NOVEMBER 4), 1985

Received; read twice and referred to the Committee on Energy and Natural Resources

---

AN ACT

To direct the Secretary of the Interior to release on behalf of the United States certain restrictions in a previous conveyance of land to the town of Jerome, Arizona.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Secretary of the Interior shall release, by quitclaim deed or other good and sufficient instrument, on behalf of the United States, with respect to the land described in subsection (b) which was conveyed by the United States to the town of Jerome, Arizona, by a patent numbered 497894, all conditions on such patent which required that such land be used for cemetery or park purposes.

(b) The land referred to in subsection (a) which was conveyed to the town of Jerome, Arizona, on November 8, 1915, by a patent numbered 4978894, is all of the southeast quarter of the southeast quarter of section 30, township 16 north, range 3 east of the Gila and Salt River meridian, Arizona, containing forty acres.

Passed the House of Representatives November 4, 1985.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

II

99TH CONGRESS
1ST SESSION

S. 1690

For the transfer of certain interests in lands in Dona Ana County, New Mexico, to Dona Ana County, New Mexico for the use as a fairgrounds.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20 (legislative day, SEPTEMBER 16), 1985

Mr. DOMENICI introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

For the transfer of certain interests in lands in Dona Ana County, New Mexico, to Dona Ana County, New Mexico for the use as a fairgrounds.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to valid existing rights and except as provided in section 3, the Secretary of the Interior is authorized and directed to convey to Dona Ana County, New Mexico, all right, title, and interest of the United States in and to certain public lands aggregating approximately one hundred and forty-one acres in Dona Ana County, New Mexico, as generally depicted on a map entitled "Dona Ana County Fair Grounds Land Transfer", dated 1985, to be used as part of the county fairgrounds, and for other public purposes and existing uses consistent with that use.

SEC. 2. All minerals in the lands described in section 1 are hereby reserved to the United States together with the right of the United States, its permittees, lessees, or grantees, at any time, to prospect for, mine and remove such minerals.

SEC. 3. In the event that the lands described in the first section, or any part thereof, are used for any purpose other than those for which conveyance is authorized, title to the entire tract shall immediately revert to the United States without the necessity for further action to accomplish the reversion of title to the United States.

SEC. 4. Conveyance of the lands pursuant to this Act shall not be made until the United States is reimbursed by Dona Ana County for administrative costs incurred in connection with the conveyance directed by this Act.

○

II

99TH CONGRESS
1ST SESSION

S. 1888

To provide for a program of cleanup and maintenance on Federal public lands, national parks, recreation areas, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 2, 1985

Mr. BUMPERS introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To provide for a program of cleanup and maintenance on Federal public lands, national parks, recreation areas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Public Lands Cleanup Act of 1985".

FINDINGS

SEC. 2. Congress finds that—

(1) public lands, parks, recreation areas, and waterways provide recreational opportunities for millions of Americans each year;

(2) the public lands administered by the several Federal land management agencies contain valuable wildlife, scenery, natural and historic features, and other resources which may be damaged by litter and misuse;

(3) it is in the best interest of our country and its citizens to maintain and preserve the beauty, safety, and availability of these public lands;

(4) these land management agencies have been designated as the caretakers of these public lands and have been given the responsibility for maintaining and preserving these areas and facilities;

(5) there is great value in volunteer involvement in maintaining and preserving public lands for recreational use;

(6) the Federal land management agencies should be concerned with promoting a sense of pride and ownership among citizens toward these lands;

(7) the use of citizen volunteers in a national cleanup effort promotes these goals and encourages the thoughtful use of these public lands and facilities;

(8) the positive impact of annual cleanup events held at various recreation sites has already been proven by steadily declining levels of litter at these sites; and

(9) a national program for cleaning and maintaining public lands using volunteers will save millions of tax dollars.

DESIGNATION OF PUBLIC LANDS CLEANUP DAY

SEC. 3. The first Saturday after Labor Day of each year is designated as "Public Lands Cleanup Day". The President shall issue a proclamation calling upon the people of the United States to observe Public Lands Cleanup Day with appropriate ceremonies, programs, and activities.

FEDERAL PARTICIPATION IN PUBLIC LANDS CLEANUP DAY

SEC. 4. (a)(1) In order to observe Public Lands Cleanup Day at the Federal level, each Federal land management agency shall organize, coordinate, and participate with citizen volunteers and State and local agencies in cleaning and providing for the maintenance of Federal public lands, recreation areas, and waterways within the jurisdiction of such agency.

(2) For purposes of this Act, the term "Federal land management agency" shall include—

(A) the Forest Service of the Department of Agriculture;

(B) the Bureau of Land Management of the Department of the Interior;

(C) the National Park Service of the Department of the Interior;

(D) the Fish and Wildlife Service of the Department of the Interior; and

(E) the Army Corps of Engineers.

(b) Each Federal land management agency shall plan activities on Public Lands National Cleanup Day which—

(1) encourage continuing public and private sector cooperation in preserving the beauty and safety of areas within the jurisdiction of such agency;

(2) increase citizens' sense of ownership and community pride in such areas;

(3) reduce litter on public lands, along trails and waterways, and within such areas; and

(4) maintain and improve trails, recreation areas, waterways and facilities.

Such activities shall be held in cooperation with appropriate State, county, and local government agencies.

(c)(1) Before the first Public Lands Cleanup Day occurring after the date of enactment of this Act, each Federal land management agency shall prepare a plan for such day which shall include—

(A) a listing of the sites to be involved in the cleanup activities;

(B) an explanation of how the agency will coordinate and work with national and local civic groups and volunteers in the cleanup effort;

(C) if applicable, an explanation of how the agency will utilize existing volunteer cleanup activities at these sites; and

(D) a listing of the State, county, and local governmental entities to be included in the cleanup effort.

(2) Within ninety days after the first Public Lands Cleanup Day occurring after the date of enactment of this Act, each Federal public lands management agency shall report to Congress with respect to the success of such agency in observing Public Lands Cleanup Day and in implementing the agency plan.

○

II

99TH CONGRESS
1ST SESSION

S. 1911

To direct the Administrator of General Services to release, on behalf of the United States, certain conditions and reservations contained in a conveyance of land to the State of Utah.

IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 1985

Mr. GARN (for himself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To direct the Administrator of General Services to release, on behalf of the United States, certain conditions and reservations contained in a conveyance of land to the State of Utah.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RELEASE OF CONDITIONS AND RESERVATIONS.

(a) RELEASE.—Not later than thirty days after the date of enactment of this Act, the Administrator of General Services shall execute such instruments as may be necessary to release the conditions and reservations set forth in subsection (b) as they apply to the land described in section 2.

(b) CONDITIONS AND RESERVATIONS DESCRIBED.—The conditions and reservations referred to in subsection (a) are—

(1) the condition that such land be used only as and for the conservation of wildlife, other than migratory birds, and that in the event such land is no longer used for such purposes, the title and immediate right to possession of such land shall revert to the United States;

(2) the condition that in the event the President of the United States, the Congress of the United States, the Secretary of Defense of the United States, or the Secretaries of the Army, Navy, or the Air Force, or either of them, make a determination that such land is needed for national defense purposes, the title and immediate right of possession to such land shall revert to the United States;

(3) the reservation to the United States of the right to enter upon such land at any time and prospect for, mine and remove uranium, thorium, and all other minerals determined pursuant to section 5(b)(1) of the Atomic Energy Act of 1946 (60 Stat. 781) to be peculiarly essential to the production of the fissionable material, and oil, gas, and other minerals in such land.

SEC. 2. LAND DESCRIPTION.

The land referred to in section 1(a) is approximately one hundred and fifty acres, more or less, in Salt Lake County, Utah, which comprises a portion of approximately one thousand two hundred and eighty acres of land conveyed by the United States to the State of Utah by quitclaim deed dated July 26, 1950, and recorded on August 1, 1950, in book 786, page 48, of the official land records of Salt Lake County, Utah. Such land is more particularly described as follows:

All that portion of the east half of section 14, township 1 south, range 2 west of the Salt Lake Meridian, Salt Lake City, Salt Lake County, State of Utah, lying easterly of that certain parcel of land conveyed by the United States of America to Utah Power and Light Company by quitclaim deed recorded as Entry Numbered 1182555 in the records of said county.

Excepting therefrom the rights of way of 1300 South Street, 5600 West Street, and 2100 South Street.

Said parcel contains an area of one hundred and fifty acres, more or less.

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II

99TH CONGRESS
1ST SESSION

S. 1963

To direct the Secretary of the Interior to convey certain interests in lands in Socorro County, New Mexico, to the New Mexico Institute of Mining and Technology.

IN THE SENATE OF THE UNITED STATES

DECEMBER 17 (legislative day, DECEMBER 16), 1985

Mr. DOMENICI (for himself and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To direct the Secretary of the Interior to convey certain interests in lands in Socorro County, New Mexico, to the New Mexico Institute of Mining and Technology.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TRANSFER OF LANDS

(a) Subject to valid existing rights and except as provided in section 3, the Secretary of the Interior (hereafter in this Act referred to as the "Secretary") is authorized and directed to convey to the New Mexico Institute of Mining and Technology (hereafter in this Act referred to as the "Institute"), Socorro, New Mexico, at fair market value, as determined by the Secretary, all right, title, and interest of the United States in and to the public lands aggregating approximately 8.501.55 acres in Socorro County, New Mexico, as generally depicted on a map entitled "New Mexico Institute of Mining and Technology Land Transfer, Socorro, New Mexico" dated 1985, to be used for research and education.

(b) The conveyance required by subsection (a) shall occur only after the Institute performs and provides to the Secretary a survey of the archeological resources of the area which identifies the mitigation measures, if any, that the Institute, in coordination with the State of New Mexico Historic Preservation Office, will implement following the conveyance and shall be conditioned on the implementation of such mitigation measures.

MAPS AND DESCRIPTION OF LANDS

SEC. 2. As soon as practicable after the date of the enactment of this Act, the Secretary of the Interior shall submit a map and legal description of the public lands designated in the first section of this Act to the Committee on Energy and Natural Resources of the Senate, and the Committee on Agriculture and the Committee on Interior and Insular Affairs of the House of Representatives. Such map and legal description shall have the same force and effect as if included in this Act, except that any clerical or typographical errors in such map or legal description may be corrected. The Secretary of the Interior shall place such map and legal description on file, and make them available for public inspection, in the Office of the Director, New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico.

RESERVATION OF RIGHTS

SEC. 3. There are reserved to the United States all minerals that may be found in the lands described in the first section, together with the right of the United States, its permittees, lessees, or grantees, at any time, to prospect for, mine, and remove such minerals.

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II

99TH CONGRESS
2D SESSION

S. 2031

To authorize the Secretary of the Interior to release restrictions on certain property located in Calcasieu Parish, Louisiana, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 30 (legislative day, JANUARY 27), 1986

Mr. JOHNSTON introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To authorize the Secretary of the Interior to release restrictions on certain property located in Calcasieu Parish, Louisiana, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Except as provided in subsection (b), not later than thirty days after the date of the enactment of this Act, the Secretary of the Interior shall execute such instruments as may be necessary to release all restrictions, conditions, and limitations on the use or conveyance of the lands identified in subsection (c), to the extent such restrictions, conditions, and limitations are enforceable by the United States.

(b) Subsection (a) shall not apply to any restrictions, conditions, and limitations that relate to a right of access to, or use of, any real property by the United States for national defense purposes in time of war or national emergency.

(c) The property referred to in subsection (a) is the property described in the deeds of conveyance which are contained in the records of the Office of the Clerk of Court for Calcasieu Parish, Louisiana, and which bear the following file numbers:

1315177
1315199
1317259
1340444
1358693
1419321
1464428
1493946
1564169
1564208

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II

99TH CONGRESS
2D SESSION

S. 2091

To amend the provisions of the Federal Land Policy and Management Act of 1976 relating to the acquisition of public lands.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 1986

Mr. HATFIELD introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To amend the provisions of the Federal Land Policy and Management Act of 1976 relating to the acquisition of public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 205 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715(c)) is amended—

(1) in the first sentence of subsection (c) by striking out "Lands and interests" and inserting in lieu thereof "Except as provided in subsection (e), lands and interests"; and

(2) by adding at the end thereof the following new subsection:

"(e) Lands acquired by the Secretary pursuant to this section or section 206 in exchange for lands which were revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218) or reconveyed to the United States pursuant to the provisions of the Act of February 26, 1919 (40 Stat. 1179), shall be considered for all purposes to have the same status as, and shall be administered in accordance with the same provisions of law applicable to, the revested or reconveyed lands exchanged for the lands acquired by the Secretary .".

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II

99TH CONGRESS
1ST SESSION

H. R. 850

IN THE SENATE OF THE UNITED STATES

DECEMBER 11 (legislative day, DECEMBER 9), 1985

Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To modify the boundary of the Humboldt National Forest in the State of Nevada, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. The purpose of this Act is to provide for the efficient administration of Federal lands located in Elko and White Pine Counties, Nevada (comprising approximately 14,743 acres and administered by the Bureau of Land Management).

SEC. 2. (a) The exterior boundary of the Humboldt National Forest is hereby modified as generally depicted on a map entitled "Boundary Modification, Humboldt National Forest", dated March 1984. Such map, and a legal description of the boundary modification, shall be on file and available for public inspection in the office of the Chief of the Forest Service, Department of Agriculture and the Director of the Bureau of Land Management, Department of the Interior, and appropriate field offices of these agencies.

(b) Subject to valid existing rights, all Federal lands brought within the boundary of the Humboldt National Forest under subsection (a) are hereby added to the Humboldt National Forest and shall be administered as part of such National Forest.

SEC. 3. Nothing in this Act shall affect the validity of or the terms and conditions of any existing right-of-way, easement, lease, license, or permit on lands transferred by this Act except that they shall be administered by the Forest Service. Reissuance of any authorization shall be in accordance with the regulations of the Forest Service, and the change of jurisdiction over such lands resulting from the enactment of this Act shall not constitute a ground for the denial of renewal or reissuance of any such authorization.

SEC. 4. For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundary of the Humboldt National Forest, as modified by section 2, shall be treated as if it were the boundary of such National Forest as of January 1, 1965.

Passed the House of Representatives December 9, 1985.

Attest: BENJAMIN J. GUTHRIE,
Clerk.

II

99TH CONGRESS
1ST SESSION

H. R. 1740

IN THE SENATE OF THE UNITED STATES

NOVEMBER 5 (legislative day, NOVEMBER 4), 1985

Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To direct the Secretary of the Interior to release a reversionary interest in certain lands in Orange County, Florida which were previously conveyed to Orange County, Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RELEASE OF REVERSIONARY INTEREST.

(a) RELEASE.—

(1) TO ORANGE COUNTY, FLORIDA.—The Secretary of the Interior, on behalf of the United States, shall release to Orange County in the State of Florida the reversionary interest of the United States contained in the deed described in paragraph (3).

(2) Reversionary interest.—The reversionary interest referred to in paragraph (1) is the condition which provides that title to the lands described in the deed shall revert to, and revest in, the United States if the lands cease to be used for recreational purposes or if such lands are deemed to be necessary for national defense.

(3) Deed.—The deed referred to in paragraph (1) is the quitclaim deed dated February 11, 1972, by which the United States conveyed to Orange County, Florida, a site of approximately 12,000 square feet on the Apopka-Vineland Road, formerly used by the United States as a radar site.

(b) Condition of Release.—The Secretary shall release the reversionary interest described in subsection (a)(2) only if Orange County, Florida, agrees to use any proceeds from the sale of the land referred to in subsection (a)(3) for park and recreation purposes (including the construction of buildings and facilities for the storage of equipment and materials used for park and recreation purposes).

Passed the House of Representatives November 4, 1985.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

Senator **Hecht**. The hearing record will remain open for 2 weeks after today, during which time written testimony on any of these measures can be submitted to the subcommittee. In the interest of time, I would ask the witnesses to limit their oral statements to 3 minutes. Additional written comments may be provided, and the entire testimony, oral and written, will be included in the record.

Do you have an opening statement, Senator Bumpers?

Senator **Bumpers**. Not at this time.

Senator **Hecht**. Would the first panel please come up?

Mr. **Bevinetto**. The first panel is the administration panel, James M. Parker, Associate Director, Bureau of Land Management; Mr. Douglas MacCleery, Deputy Assistant Secretary, Natural Resources and Environment, Department of Agriculture, Washington, DC; Mr. F. Henry Habicht, Assistant Attorney General, Land and Water Resources Division, Department of Justice; Mr. Robert Dawson, Assistant Secretary of the Army for Civil Works; Mr. Carl Garner, Resident Engineer, Army Corps of Engineers; Mr. James J. Buckley, Acting Assistant Commissioner, Office of Real Property, General Services Administration, Washington, DC.

Senator **Bumpers**. Mr. Chairman.

Senator **Hecht**. Yes.

Senator **Bumpers**. With your indulgence, I would like to do my statement now. My statement deals exclusively with S. 1888, which is what we call the public lands cleanup bill.

STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator **Bumpers**. I want to say I will just, if I may extemporize and then insert my statement in the record. My bill is one which now has Senators Bradley, Andrews, Ford, Durenberger, Rockefeller, Hecht, DeConcini, Danforth, Inouye, Kerry, and Eagleton as cosponsors.

I think it is a very appropriate bill and should not cause any controversy whatever because it is a bill which will save the Federal Government, in my opinion, millions of dollars a year and has no down side. It is based on a very highly successful cleanup program that Carl Garner, who is seated on my extreme right here at the panel, as the resident engineer up at Greers Ferry Lake, started 15 years ago.

This bill, based on what Carl has done at Greers Ferry Lake, would allow the resident engineers and other appropriate officials on virtually all Federal lands, to set an annual cleanup day in which volunteers from all over the area would participate. Greers Ferry Cleanup Day has become a great tradition in our State.

I wanted to extend that to roughly 700 million acres of public lands and see if we could not save ourselves a tremendous amount of money and make the areas much more aesthetic to visit. I will insert my statement in the record here, and I am most especially interested in all the members of the committee hearing the testimony of Carl Garner and others, including Keep America Beautiful, who are supporting this bill.

With that, Mr. Chairman, I will insert this in the record without objection.

Senator HECHT. Without objection. Thank you very much.

[The prepared statement of Senator Bumpers follows:]

STATEMENT OF SENATOR DALE BUMPERS
ON S. 1888, THE PUBLIC LANDS CLEANUP ACT
MARCH 4, 1986

Mr. Chairman, let me express my appreciation to you for scheduling this hearing to receive testimony on my bill, S. 1888, the Public Lands Cleanup Act. Senators Bradley, Andrews, Ford, Durenberger, Rockefeller, Hecht, DeConcini, Danforth, Inouye, Kerry, and Eagleton have been added as cosponsors of this measure. I feel very strongly about the importance of both caring for our public lands and building a sense of responsibility for these lands in the minds of the people of this nation. This legislation addresses these concerns, and I thank the Chairman for including S. 1888 in today's hearing.

In these difficult times any new program must be measured against the backdrop of $200 billion a year deficits. Mr. Chairman, this bill easily measures up. Not only will it not cost taxpayers a single dime to implement a public lands cleanup program, but it will save millions of dollars.

S. 1888 would establish a national program for the cleanup and maintenance of our Federal public lands, national parks, and recreation areas -- a program utilizing the vast resources of our Federal public lands management agencies and the boundless energies of the people of this country who use these lands.

It would require each Federal land management agency to organize and coordinate with citizen volunteers and State and local agencies in cleaning and maintaining Federal public lands, recreation areas, and waterways within the jurisdiction of each agency. These efforts would culminate in Public Lands Cleanup Day, which my bill designates as the first Saturday of September after Labor Day each year.

This measure was inspired by the highly successful "Greers Ferry Lake and Little Red River Cleanup," an annual Arkansas event organized 15 years ago by Carl Garner, Resident Engineer with the Army Corps of Engineers. The Greers Ferry Lake event was such a success in 1970 and the years following that the cleanup campaign was expanded to other Corps of Engineers-operated lakes and other federal and state lands in Arkansas seven years ago and is now known as the "Great Arkansas Cleanup." The event has gained national recognition, including four first-place awards from the Keep America Beautiful organization, and now serves as a model for the nation.

After attending the event this past September, I began thinking about taking Carl's idea and applying it on a national level. Why couldn't our parks, forests and public lands supervisors organize volunteers in their areas in the same way Carl Garner did in Arkansas? I am very pleased to welcome Carl Garner here today to provide his insight and to give a bit of the background on this program which has become a model for similar efforts throughout the country.

The federal government manages over 700 million acres of public land and the number of recreation visits to these lands has risen 35 to 45 percent over the past decade. In this hectic, pressure-packed world we live in, individuals and families are constantly seeking places to "get away from it all" and are turning more and more to our national parks, campgrounds and waterways as a source of relaxation and recreation.

While use of our public lands has increased, financial resources available to the public lands managers has decreased. During this time of serious budget constraints, all agencies have been forced to find ways of cutting back. As a result, our public lands managers have fewer financial resources to meet the needs at their sites. This bill seeks to provide a partial solution to the resource problems facing our public lands managers. The organized use of volunteers for maintenance and cleanup in our parks and forests and along our waterways could help these lands managers stretch their limited resources.

The value of volunteers to our Federal land management agencies is well-documented. The National Park Service, Fish and Wildlife Service, Bureau of Land Management and the Forest Service all have active volunteer programs. Volunteers are involved in a variety of programs ranging from maintaining trails and litter collection to engineering and public afffairs. In 1984 these volunteer programs involved over 85,500 people, including individual citizens and corporations. The agencies estimated the monetary value of these programs at approximately $37 million in 1984. I think everyone would agree that these are very impressive statistics.

While the monetary savings associated with the use of volunteers is significant, I believe that there is an even greater benefit to be realized through these efforts. Involving citizen volunteers in cleaning and maintaining our public lands, recreation areas, and waterways is an essential step toward increasing our sense of pride and ownership in these lands.Keep American Beautiful, Inc. (KAB), a national, public service organization, has been a leader in encouraging lasting public and private sector interest in preserving the beauty, safety and healthfulness of our public lands. KAB's major program, the Clean Community System, is in place in over 300 cities and counties nationally and includes six statewide programs. Through its national organization, Keep America Beautiful, Inc. will play a major role in the success of Public Lands Day activities and I am pleased that a representative of this fine organization is here today to provide comments on my bill.

Our national parks, forests and waterways are the envy of the world. They make priceless contributions to the physical and mental well-being of the people of our Nation. They are important reminders of our past and represent the promise of our future. With the pleasure provided by these public lands comes a serious responsibility to care for them. I firmly believe that with a strong, organized cooperative effort between the federal government and the citizens of this country, we can do a great deal to ensure that these lands will be available to future generations to enjoy and treasure.

STATEMENT OF HON. CHIC HECHT, A U.S. SENATOR FROM THE STATE OF NEVADA, ON H.R. 850 AND S. 1568

Senator HECHT. I would like to make a few remarks myself on H.R. 850, a bill to adjust the boundary of the Humboldt National Forest. Although a simple bill, this would improve the effectiveness of public land management in Nevada, a goal I am sure we can all relate to in our respective States.

This bill, if enacted, would modify the forest boundary and transfer administrative jurisdiction of about 15,000 acres of public lands from the Bureau of Land Management to the Forest Service.

These public lands which are located in Elko and White Pine Counties in northeastern Nevada, have historically presented management problems for BLM because of their isolation from other BLM lands.

Consolidation of these lands with other adjacent lands of the Forest Service will improve their management. There appear to be no conflicts or problems with this transfer. The primary use of these lands is for livestock grazing. The allotments for these will transfer with the land. None of these lands have wilderness potential. Management of fisheries resources will benefit only as one agency will have responsibility for the full stream lane.

I have one other bill which is of interest to the State of Nevada. S. 1568 would withdraw 1,949 acres of public land in Hungry Valley, NV, for use by the Reno Sparks Tribal Colony.

The Reno Sparks Colony was established in 1917 with the purchase of 20 acres by the Federal Government in order to address the needs of the various nonreservation Indian groups that had not been accommodated by the treaty allotment system.

Since then, the Reno Sparks Colony has worked to expand this land base for housing and economic development in order to accommodate the increase in population more than 400 percent since it was established.

This land withdrawal would satisfy the needs and desires of the tribe to expand the reservation, a goal they have aspired to for 15 years, but have been unable to attain because of the lack of financial ability.

This withdrawal has generated considerable local support, including the cities of Reno and Sparks, as well as Washoe County in the State of Nevada. I believe this withdrawal would be in the best interests of the citizens of Nevada.

Senator Bingaman, did you have an opening statement?

Senator BINGAMAN. Just a short one, Mr. Chairman.

STATEMENT OF HON. JEFF BINGAMAN, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator BINGAMAN. I want to thank you and Senator Wallop for holding the hearing. I also look forward to the testimony of the witnesses. I am particularly interested in two of the bills, S. 1963 and S. 1888.

S. 1963 would transfer Federal lands in Socorro County, NM, to the New Mexico Institute of Mining and Technology. The requested acreage would almost double the size of the laboratory of the Terminal Effects Research Group of New Mexico Tech. The laboratory is used to conduct a wide variety of research and testing. Traditionally, the Department of Defense has been its primary client, but increasingly the Departments of Energy and the Department of State, as well as other Government agencies, are turning to this laboratory for assistance.

The land that is involved here, Mr. Chairman, is contiguous to the present laboratory and well situated for security purposes, and I look forward to working with Senator Domenici on this legislation.

Let me just also mention and congratulate Senator Bumpers on S. 1888, which would provide for a program of cleanup and maintenance on Federal public lands, including national parks, national forests, and recreation areas.

I think this is a worthwhile initiative that could help focus attention on this most valuable national resource, our public lands.

In this era of declining budgets, this would provide a way for thousands of volunteers throughout the country to have an opportunity to help clean up our parks and forests and to assist Federal land managing agencies carry out their responsibilities. I think it also is a very useful device for increasing a sense of pride in the common ownership of these lands, and I would like to be added as a cosponsor of your bill if I could.

Senator HECHT. Let the record so show.

Senator BINGAMAN. All right. Thank you very much.

Senator HECHT. We are going to start first with Mr. Parker, then Mr. MacCleery on S. 1568 and H.R. 850.

Mr. Parker.

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 1568

Mr. PARKER. Mr. Chairman and Members of the Committee, I am pleased to be here today to present the views of the Department of the Interior on S. 1568, which is a bill to declare that the United States will hold certain lands in trust for the Reno Sparks Indian Colony.

We have no objection to the transfer proposed by S. 1568.

Senator BUMPERS. Could you pull that microphone a little closer, please? I am having trouble hearing you.

Mr. PARKER. We have no objection to the proposed transfer, provided that the bill be amended to provide for the payment by the tribe of fair market value for the lands transferred from the Bureau of Land Management jurisdiction, including the value of any improvements on the land.

Without a provision for payment, we would have to oppose the bill. The BIA also has some concerns that the addition of the acreage in question to trust status could commit the Federal Government to providing additional services and infrastructure support to the tribe.

Of the 1,948 acres of land involved, a total of 1,920 acres are currently administered by BLM. These lands are located in an area known as Hungry Valley, which is approximately 15 miles north of the towns of Reno and Sparks in the extreme northeastern part of Nevada.

The remaining 28.38 acres are presently held by the United States and administered by the Bureau of Indian Affairs.

The subject land can be characterized as primarily desert terrain consisting of various types of desert grasses, et cetera. There are some grazing permits on the land which cover three sections, or some 1,920 acres. Fair market value of the property is estimated at approximately $500 per acre based on recent sales of comparable land in the area.

The land in question is completely surrounded by other unimproved public domain lands administered by BLM.

The Reno Sparks Colony has no claim under the treaty or other legal authority to the land proposed to be transferred under this bill, and without any such authority we believe that BLM land should be transferred only upon payment of fair market value by the tribe.

Since, under our recommendations, the tribe would be paying fair market value for the land in question, the tribe may also wish to seek an amendment to provide for acquisition in more manageable increments. It is our understanding that the key land section the tribe wishes to acquire is that which cancellation of the grazing permit would be sought. The other two sections to be acquired under this bill would be left with existing grazing rights.

While the tribe could not develop the other two sections without terminating the existing grazing rights, it is our understanding that the tribe currently wants the extra two sections only as a buffer against further community development in the Reno Sparks area.

The tribe intends to utilize the section for which the grazing rights are to be extinguished for tribal subdivisional housing, a community of about 160 units. A master plan has been developed for this by the residents of the community, and includes a school, a convenience store, and some recreational facilities.

We believe that it would not be appropriate to legislatively require BLM to administer the remaining grazing permits and leases on the lands transferred to the colony, since the management objectives of BLM and the colony could possibly conflict.

Section 3 of the bill will add the Reno Sparks Colony to the list of tribes having long-term, up to 99 years of leasing authority. We believe that this authority is not necessary for most tribal leasing activities, and may actually work to the detriment of the tribe.

We note an error in the land description in S. 1568. In order to avoid clerical errors in printing, we recommend that the land description be deleted from the bill and that the bill require the legal descriptions to be published by the Secretary in the Federal Register.

Finally, the words "public" and "land" on page 1, line 10, should be separated.

That concludes my statement. I will be happy to answer any questions you may have.

[The prepared statement of Mr. Parker follows:]

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 1568, A BILL "TO DECLARE THAT THE UNITED STATES HOLDS CERTAIN LANDS IN TRUST FOR THE RENO SPARKS INDIAN COLONY."

March 4, 1986

Mr. Chairman and Members of the Committee, I am pleased to be here today to present the views of the Department on S. 1568, a bill "To declare that the United States holds certain lands in trust for the Reno Sparks Indian Colony."

We have no objection to the transfer proposed by S. 1568, provided that the bill is amended to provide for payment by the tribe of fair market value for the lands transferred from the Bureau of Land Management (BLM) jurisdiction, including the value of any improvements. The Reno Sparks Colony has no better claim to free public lands than any other entity. Without a provision for payment, we would oppose this bill. We also have some concerns that the addition of the acreage in question to trust status could commit the Federal Government to providing additional services and infrastructure support to the tribe.

If enacted, S. 1568 would declare that subject to valid rights existing on the date preceding enactment of the bill, all right, title, and interest of the United States in approximately 1,948.38 acres of land in Washoe County, Nevada, are to be held by the United States in trust for the benefit and use of the Reno Sparks Indian Colony, and such lands shall be declared a part of the Colony. Of the subject lands, a total of 1,920 acres are currently administered by the BLM. These lands are located in an area known as Hungry Valley, approximately fifteen miles north of the towns of Reno and Sparks in the extreme northwestern part of Nevada. The remaining 28.38 acres are presently held by the United States and administered by the Bureau of

Indian Affairs (BIA) for the use and benefit of the "landless Indians of Nevada."

S. 1568 would also further amend the Act of August 9, 1955 (25 U.S.C. 415) to provide the Reno Sparks Colony authority to enter into up to 99-year leases, subject to the approval of each lease by the Secretary of the Interior.

Finally, S. 1568 provides that section 164 of the Clean Air Act (42 U.S.C. 7474) would not apply to the area being transferred in trust to the Reno Sparks Colony. Subsections (c) and (e) of that section specifically give to states and Indian tribes mutual remedies in the event of a redesignation of lands within their jurisdictions for air quality management in a manner that might be detrimental to the interests of either of the parties. These remedies would not be available to the Colony for the lands transferred under the bill.

The present membership of the Reno Sparks Colony consists of Washoes, Paiutes, and Shoshones. These Indians reside on three tracts of land totaling 28.42 acres located between the Cities of Reno and Sparks. This land was acquired in 1917 and 1927 through two separate purchases by the United States for displaced Nevada Indians, numbering at the time between 150 and 200 persons. The third tract of .5 acres was purchased by the tribe and taken into trust on August 13, 1974. On June 10, 1935, the Indians residing in the Colony voted to accept the Indian Reorganization Act of June 18, 1934, and later adopted a constitution and bylaws which was approved by the Secretary of the Interior on January 15, 1936. The present Colony has now expanded to include about 600 people.

The subject land can be characterized as primarily desert terrain consisting of various types of desert grasses common to the region (juniper and sagebrush). The BLM manages the land under the rules and guidelines established pursuant to the Federal Land Policy and Management Act of 1976 (90 Stat. 2743). The Inter-Mountain Land and Livestock Company has a grazing permit which covers three sections (1,920 acres) of the lands described in S. 1568. However, there are no rights-of-way or mining claims of record. The fair market value of the property is estimated at approximately $500 per acre based on recent sales of comparable land in the area. The land in question is completely surrounded by other unimproved public domain land administered by the BLM.

The Reno Sparks Colony has no claim under treaty or other legal authority to the land proposed to be transferred under this bill. Without any such authority, we believe that the BLM land should be transferred only upon the payment of fair market value by the tribe, including the value of any improvements.

Since, under our recommendations, the tribe would be paying fair market value for the land in question, the tribe may also wish to seek an amendment to S. 1568 to provide for acquisition in more manageable increments. It is our understanding that the key land section the tribe wishes to acquire is that for which cancellation of the grazing permit is sought. The other two sections to be acquired under this bill would be left with existing grazing rights. While the tribe could not develop the other two sections without terminating the existing grazing rights, it is our understanding that the tribe currently wants the extra two sections only as a buffer against further community development in the Reno and Sparks area.

The tribe intends to utilize the section for which grazing rights are to be extinguished for a tribal subdivisional housing community of 160 units. A master plan developed by the tribe indicates that in addition to tribal residences the community will consist of a convenience store, a school, and a community and recreational facility.

Although there is still an unemployment rate of 40 percent on the reservation, employment is provided for tribal members through several tribal businesses. Accomplishments of the tribe include the construction of (1) tribal office complex, (2) 105 housing units, (3) health center, (4) mini-mall; and (5) the renovation of the police and court building. The tribe has also expanded its water and sewer system. Most of the funding for these projects have been provided by the revenues received from the tribally operated smoke shop.

Overall tribal income in recent years has been as much as $900,000 annually. However, after the expenses of tribal government are paid, less than 20 percent of the tribe's annual income is available for economic development. There are currently no monies held in trust by the Department for the tribe. Therefore, in order to continue its progress toward self-sufficiency, the tribe needs a larger land base for community needs.

As previously mentioned, three sections of land within the proposed area are presently being permitted to the Inter-Mountain Land and Livestock Company. Section 2(a)(2) of S. 1568 provides for the cancellation of the grazing permit to one of the sections of land described as Township 21N, Range 20, section 4, with payment of just compensation for any improvements to the permittee. Section 2(d) states that grazing privileges on the remaining two sections will continue under the administration of the BLM unless cancelled for failing to subscribe to the BLM leasing regulations.

We believe that it would not be appropriate to require the BLM to administer the grazing permits and leases for any lands transferred to the Reno Sparks Colony, since the management objectives of the BLM and the Colony may conflict. To address this concern, the bill should be amended to (1) allow the Secretary to cancel the grazing permits and leases on lands described in the bill; and (2) require BIA to administer all future leases under the rules and regulations of the Department of the Interior for the administration of grazing privileges on Indian land (25 Code of Federal Regulations 166).

Section 3 of the bill will add the Reno Sparks Colony to the list of tribes having long-term (up to 99 years) leasing authority. That authority is not necessary for most tribal leasing activities and may work to the detriment of those tribes which do not have the technical expertise in complex business leasing and might be pressured into leases with unnecessarily long terms. While the authority is a concern and added responsibility to the BIA as trustee, we do not object to the tribe's wish.

We note errors in the land descriptions in S. 1568. In order to avoid clerical errors in the printing, we recommend that the land descriptions be deleted from S. 1568 and that the bill instead require the legal descriptions to be published by the Secretary in the Federal Register.

Finally, the words "public" and "land" on page 1, line 10, of S. 1568 should be separated.

This concludes my prepared statement. I will be pleased to answer any questions you might have.

Senator **Hecht**. Thank you very much. I have a statement here from Senator Paul Laxalt of Nevada which I will put into the record.

[The prepared statement of Senator Laxalt follows:]

Statement of
Senator Paul Laxalt
on S. 1568
March 4, 1986

Mr. Chairman:

The Reno-Sparks Indian Colony is seeking through S. 1568 to expand its land base to provide for the housing, cultural and economic needs of its expanding population. I appreciate this opportunity to express my support for the bill and for the goals of the Tribe.

The present tribal colony was established in 1917 and consists of only 20 acres. It was created to accomodate certain nonreservation bands of Indians who were not taken care of under the treaty allotment system. The colony has continued to thrive as the cultural home and economic base of these Indians.

The tribal numbers have increased over 400 percent since the establishment of the colony and it simply no longer provides the living space for a unified tribal community. Many members have been forced to reside outside the community although their preference is to live within the tribal unit. That preference was evident when the colony was created and this addition to the land base will continue the policy of the Congress to honor that desire of our native Americans.

Specifically, this bill will establish a new colony on 1900 acres of public lands north of Reno, Nevada in an area known as Hungry Valley. The Bureau of Indian Affairs and the Bureau of Land Management facilitated the search for a new land base and this area is the best choice. An adequate source of water is available and approved by the State. The land will lend itself to residential development. Access is not now available but has been planned to pose the least disruption to existing communities. The bill also places the present colony and a recently purchased one acre addition in trust status along with the new Hungry Valley addition, as trust status was never established on the original tract.

The governments of Washoe County and the cities of Reno and Sparks are all on record in support of this measure.

Not addressed in the bill but important to the development of this legislation are separate agreements between the Tribe and Washoe County and between the Tribe and a private grazing allotment holder. The Tribe will relinquish to Washoe County a small tract of land it owns in Lemon Valley which will permit continuation of the popular annual air races. The Tribe will also purchase the present grazing rights from the present private allotment holder in Hungry Valley.

I believe the bill is important to continue congressional support for the continuity of the tribe and its economic viability. The Hungry Valley addition will provide the tribe the land it needs for expansion. I believe the bill carefully balances the Tribe's needs with competing interests in the growing Reno-Sparks area. I urge the Committee to report the bill favorably.

Thank you.

Senator HECHT. Mr. MacCleery.

Mr. MACCLEERY. May I ask which bill?

Senator HECHT. S. 1568.

Mr. MACCLEERY. We have no position on S. 1568 of the Department of Agriculture.

Senator HECHT. Then let us go to H.R. 850.

STATEMENT OF DOUGLAS W. MacCLEERY, DEPUTY ASSISTANT SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE, ON H.R. 850

Mr. MACCLEERY. Thank you.

I am Doug MacCleery, Deputy Assistant Secretary for Natural Resources, Department of Agriculture. The Department appreciates the opportunity to present the Department's views on H.R. 850, to modify the boundary of the Humboldt National Forest in Nevada.

We recommend that the subcommittee take no action on this bill at this time. The Forest Service and the Bureau of Land Management have developed a proposal to interchange about 24 million acres of land under their respective jurisdictions. Included in this proposal are the almost 15,000 acres of public lands included in this bill, in H.R. 850.

A legislative proposal to implement the interchange was transmitted to the President of the Senate on February 18, 1986, by the Secretaries of Interior and Agriculture. We understand that the proposal has been referred to the Committee on Energy and Natural Resources.

The purpose of H.R. 850 is similar to that of the interchange proposal; that is, to achieve more efficient administration of the Federal lands in the State and thereby reduce cost. However, we believe that it is more appropriate to examine such opportunities on a national basis.

The situation found in northeast Nevada where the Forest Service and BLM share boundaries and are intermingled is found in many places in the West. Considering all such opportunities at one time, rather than for individual national forests, can maximize the benefits to be achieved through interchange of National Forest System and public lands.

For example, there are 15,000 acres involved in this bill. In contrast, there are 534,000 acres involved in the interchange proposal for the State of Nevada as a whole. We feel that deferring the final action on H.R. 850 until the Senate has had an opportunity to consider our proposal would allow the committee to move more fully to evaluate the full range of opportunities available for interchange in the State of Nevada.

That concludes my statement on H.R. 850.

[The prepared statement of Mr. MacCleery follows:]

STATEMENT OF
DOUGLAS W. MACCLEERY, DEPUTY ASSISTANT SECRETARY
NATURAL RESOURCES AND ENVIRONMENT
U.S. DEPARTMENT OF AGRICULTURE

Before The
Subcommittee on Public Lands, Reserved Water and Resource Conservation
Committee on Energy and Natural Resources,
United States Senate

Concerning H.R. 850--Humboldt National Forest

March 4, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

We appreciate the opportunity to join with the Subcommittee to present the Department of Agriculture's views on H.R. 850, "To modify the boundary of the Humboldt National Forest in Nevada." We recommend that the Subcommittee take no action on this bill at this time. The Forest Service (FS) and the Bureau of Land Management (BLM) have developed a proposal to interchange about 24 million acres of land under their respective jurisdictions. Included in this proposal are the 14,743 acres of public lands included in this bill. A legislative proposal to implement interchange was transmitted to the President of the Senate on February 18, 1986, by the Secretaries of the Interior and Agriculture. We understand that the proposal has been referred to the Committee on Energy and Natural Resources.

The public lands which are the subject of H.R. 850 are located in Elko and White Pine Counties, Nevada, and lie mostly in the Ruby Valley. The principal use of the lands is for livestock grazing. They are isolated from otner BLM-administered lands in the area. The bill would extend the boundary of the National Forest to include these adjacent and nearby public lands, which would then become a part of the National Forest. The transfer would not affect the validity of terms or conditions of any existing right-of-way, easement, lease, license, or permit on the lands to be transferred.

The interchange proposal has been the subject of considerable public discussion. The two agencies completed 30 public hearings throughout the Nation, including three in Nevada, during June 1985 and concurrently conducted a public comment period. Our original proposal which was the subject of this public review would have transferred the two National Forests in Nevada to BLM. This action was not supported by those in Nevada who commented. Subsequently, we worked with interested organizations in the State, under the guidance of the Nevada congressional delegation, to reach a compromise. We believe the proposal just submitted to Congress represents agreement within the State. It retains the National Forest land with the Forest Service and interchanges lands on a more local and smaller scale throughout the State.

The purpose of H.R. 850 is similar to those of the interchange proposal--that is, to achieve more efficient administration of the Federal lands in the State, and thereby reduce costs. However, we believe that it is more appropriate to examine such opportunities on a national basis. The situation found in northeast Nevada where FS and BLM lands share boundaries and are intermingled is found in many places in the West. Considering all such opportunities at one time, rather than for individual National Forests, can maximize the benefits to be achieved through interchange of National Forest System and public lands. Deferring final action on H.R. 850 until the Senate has had an opportunity to consider our proposal would allow the Committee to more fully evaluate the range of opportunities in Nevada.

That concludes my statement. I would be happy to answer the Subcommittee's questions.

Senator Hecht. Thank you.

Mr. Parker, did you want to speak on H.R. 850?

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON H.R. 850

Mr. Parker. Thank you, Mr. Chairman.

While the Interior Department has no objection to the proposed transfer and we have in the past even supported it, we, too, suggest that consideration of the bill be held in abeyance pending the consideration by the Congress of the Federal Land Administration Act of 1986 which was transmitted to the Congress in February and which has been referred to the Energy and Natural Resources Committee.

Under the interchange proposal, the land involved would be transferred to the Forest Service and would become part of the Humboldt National Forest. Although H.R. 850 and the interchange proposal would have the same effect on the lands involved, we believe too that it should be considered on at least a statewide and preferably a nationwide basis with the interchange proposal.

[The prepared statement of Mr. Parker follows:]

MAR 4 1986

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON H.R. 850, AN ACT "TO MODIFY THE BOUNDARY OF THE HUMBOLDT NATIONAL FOREST IN THE STATE OF NEVADA AND FOR OTHER PURPOSES."

It is a pleasure to appear before the subcommittee today to discuss the Department of the Interior's position on H.R. 850, which would transfer from the Bureau of Land Management to the Forest Service administrative jurisdiction over approximately 14,743 acres of BLM-administered land in Elko and White Pine Counties, Nevada. The boundary of the Humboldt National Forest would be modified to include these lands.

Section 3 would provide that nothing in H.R. 850 would affect the validity of or the terms and conditions to any existing right-of-way, easement, lease, license, or permit on the transferred lands, except that they would be administered by the Forest Service. Reissuance of any authorization would be in accordance with Forest Service regulations, and the change of administrative jurisdiction over the lands could not constitute a ground for the denial of renewal or reissuance of any such authorization.

Section 4 would provide that the boundary of the Humboldt National Forest, as modified, would be treated as if it were the boundary of the Forest as of January 1, 1965, for purposes of section 7 of the Land and Water Conservation Fund Act of 1965, which concerns the allocation of Fund monies for Federal purposes.

While we have no objection to this proposed transfer, we suggest that consideration of the bill be held in abeyance pending the consideration by the Congress of "The Federal Lands and Administration Act of 1986," which was transmitted to Congress on February 18, and has been referred to the Energy and Natural Resources Committee. That bill would provide for a transfer of jurisdiction of Federal lands between the Bureau of Land Management and the Forest Service in order to enhance public service, improve efficiency of management of natural resources, and reduce the costs of managing Federal lands. Under the interchange proposal, the lands involved in H.R. 850 would be transferred to the Forest Service and become part of the Humboldt National Forest. Although H.R. 850 and the interchange proposal would have the same effect on the lands involved in H.R. 850, the interchange proposal would address the matter on a nation-wide basis. We look forward to working with the Congress on the interchange proposal.

This concludes my statement. I will be pleased to answer any questions on this subject.

Senator HECHT. S. 1888, Mr. Dawson.

STATEMENT OF ROBERT K. DAWSON, ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS), DEPARTMENT OF THE ARMY

Mr. DAWSON. Thank you very much, Mr. Chairman, members of the subcomittee. It is a pleasure to be here to comment on S. 1888. I might point out that it was the personal conversation with Senator Bumpers in his own State that heightened the interest of the Army in this legislation, and we are very pleased that that occurred because we are here to enthusiastically support S. 1888.

We would like to commend you, Mr. Chairman and Senator Bumpers, for the leadership on this legislation. I would like to say just a word or two and then defer to someone who can give you a real world look at how this bill would work and the excellent kinds of activities that we think would flow from S. 1888.

The Army Corps of Engineers administers the second largest Federal outdoor recreational program in the United States. The majority of our 460 water resource development projects located in 42 States are close to the communities they serve.

In fact, 80 percent of our projects are within 50 miles of a major population area and 94 percent are within a 2-hour drive.

Senator Bumpers has introduced the bill already mentioned which mirrors what we consider central to our recreation program. The Corps of Engineers has a history of participation in the type of activity described in S. 1888. Our organization remains active in assisting Keep America Beautiful, in the development of Public Lands Day.

And I want to mention the leadership of Secretary Don Hodel particularly in the administration and throughout Government in that important arena.

We are convinced from our extensive experience that the time is right for the programs Senator Bumpers has suggested. We have only one concern with the bill as introduced, and that is the requirement that Federal agencies report their activities to Congress. Although such reporting requirements might add emphasis to some programs, the additional workload comes at a time when Federal agencies are scrutinizing how we spend our resources.

My recommendation would be to initially authorize only the program development and omit the reporting requirement. From the Corps of Engineers' standpoint, no further congressional mandate will be necessary. We will continue to aggressively seek ways to carry out our mission cooperatively with partners.

I will be glad to answer any questions, Mr. Chairman, but I would again like to go now to the most important part of my testimony, and that is the opportunity to introduce Mr. Carl Garner, who has been the resident engineer at the corps' Greers Ferry Lake since the project went into operation in 1964.

Carl is the man who developed the idea of getting the public involved with corps projects and initiated the first cleanup day at Greers Ferry. It is only through his help that the idea caught on and developed into today's annual event.

Carl is the best man we have to relate the story of the annual Greers Ferry Lake Cleanup, and I would like to introduce him, Mr. Chairman, a dedicated public servant, to summarize briefly that experience for you.

[The prepared statement of Mr. Dawson follows:]

DEPARTMENT OF THE ARMY

OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY

(CIVIL WORKS)

STATEMENT

OF

THE HONORABLE ROBERT K. DAWSON
ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)

BEFORE THE
UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS, RESERVED
WATER AND RESOURCES CONSERVATION

MARCH 4, 1986

Mr. Chairman, Members of the Subcommittee, it is my pleasure to appear before you today to comment on S.1888.

The U.S. Army Corps of Engineers administers the second largest Federal outdoor recreation program. And, while we experience more public use than the National Park Service, a fact that's surprising to many, our product is different. The majority of our 460 water resource development projects, located in 42 states, are close to the communities they serve. In fact 80 percent of our projects are within 50 miles of a major population area and 94 percent are within a two-hour drive. This fact helps account for the more than 500 million visitor days of use that occur at the 11 million acres of land and water under the Corps charge. Our users look to us for an evening of fishing, a weekend away from their daily routine, or a low cost vacation, close to home. They come largely to boat, fish, swim and camp. They expect reasonable facilities, in attractive setting, properly maintained and with adequate security.

Senator Bumpers has introduced a bill which mirrors what we consider central to our recreation program, and in fact our entire natural resources management program -- sound partnerships between land managers, the private sector and the benefiting public. The Corps of Engineers has a history of participation in the type of activity described in S.1888.

In 1970, concerned about the accumulating litter at Greers Ferry Lake, a Corps project in Arkansas, the project manager organized a community cleanup. On the day of the event it rained, yet 600 people turned out. From this damp beginning an annual tradition was established and flourished. In 1979, the cleanup was expanded from one Corps project to a statewide event which attracted 17,000 participants. In the afternoon, when the work is done, the participants gather in celebration of the effort. Nationally recognized entertainment figures, share the stage with regional favorites while a donated 1300 pound catfish feast is put away. The continued growth of the Greers Ferry effort and its spread to other Corps projects, is testimony to the willingness of the private sector to join with public entities for the benefit of the land.

The Greers Ferry Lake cleanup has been adopted by Keep America Beautiful, Inc. as a model for their emerging program of a nationwide Public Lands Day. The concept builds on the Greers Ferry model and encompasses cleanup projects and other public lands improvements. This broadened scope will include cleanups, but could also entail the renovation of recreation areas, erosion control, tree plantings and landscaping, or historic property repair. The ideas are limited only by the needs of the land and the imagination of the partners. Organizations such as Keep America Beautiful serve a vital role as facilitators, catalysts if you will. They provide the link between partners, the organizational elbow grease.

The unique aspect of such programs is their ability to instill a sense of ownership and pride, on the part of all of us, toward public lands. While participation in the annual Greers Ferry Lake cleanup has remained high, the amount of litter collected has steadily declined. This reduction reflects the inherent capability of such programs to create a lasting change in our attitude toward public lands.

The reliance on community volunteers and private sector support is added assurance that the improvement projects undertaken are important not only to the land manager, who rightfully has a parental relationship to the land, but at the same time are seen as important and needed by local communities.

Our staff remains active in assisting Keep America Beautiful in the development of Public Lands Day. We presently chair both the National Advisory Council and the Advisory Council's Task Force on Public Lands. Several of our projects have developed community cleanup programs that are similar to the one at Greers Ferry. Just recently we have encouraged our engineer divisions to take part in Keep America Beautiful's effort to identify 100 pilot projects for the fall of 1986. We are proud of our role in this development and will continue to seek ways to help focus the deep seated sense of stewardship that Americans have for the land.

I am convinced, from our experience, that the time is right for the programs Senator Bumpers has suggested. They are win-win propositions for all involved. They concentrate civic pride, foster an enhancement of our land ethic, and produce needed and meaningful improvements without additional tax dollars.

I have only one concern with the bill as introduced. That is the requirement that Federal agencies report their activities to Congress. Although such reporting requirements might add emphasis to some programs, the additional workload comes at a time when Federal agencies are scrutinizing how we spend our resources. My recommendations would be to initially authorize only the program development and omit the reporting requirement. From the Corps of Engineers standpoint, no further Congressional mandate will be necessary. We will continue to aggressively seek ways to carry out our mission, cooperatively, with partners.

Thank you for the opportunity to testify. I'll be glad to answer any questions you may have for me.

STATEMENT OF CARL GARNER, RESIDENT ENGINEER, ARMY CORPS OF ENGINEERS, GREERS FERRY, AR

Mr. GARNER. Thank you, Secretary Dawson.

I, too, am pleased to be before the committee today and to talk about S. 1888.

First, let me tell you where Greers Ferry Lake is. It is located in north central Arkansas, in the foothills of the Ozarks. It is a corps project which was completed in 1964. The lake has 40,000 acres with 300 miles of shoreline, 15 parks, with an annual visitation of more than 5 million.

In 1970, tons of litter on the shoreline and in the river were threatening the natural beauty of the Earth. In that year, we organized the first volunteer cleanup.

The 16th annual event was held on September 8, 1985. Each cleanup has been more successful than the previous one. The cleanup is now a year-round effort with six primary objectives. Those are: Removal and reduction of litter; to involve as many people as possible; a continuing education program; improved community relations; recycling the resources; and provide a model for others to follow.

Some of these accomplishments so far as Greers Ferry Lake are a clean lake each year. We have reduced litter more than 50 percent, even though our visitation has more than doubled during this period; 2,400 people participated in this in 1985, including 650 Boy and Girl Scouts; 240 businesses and organizations contributed funds, money, and prizes in the amount estimated to be around $12,000.

A public sense of pride and ownership has developed in Greers Ferry and this has meant a lot to our management of that project. Hundreds of thousands are aware of this effort and hundreds of thousands of others are touched that know about it.

Tons of aluminum are now being recycled. One year, Coca-Cola purchased 10,000 pounds of aluminum cans at one of our cleanups. In 1978, all corps projects in Arkansas, 15 lakes and the Arkansas River, joined for what is now the Great Arkansas Cleanup.

Since 1978, 24 other corps lakes in 5 States have had successful annual cleanups.

Some other benefits that we know: It is a growing, rewarding, annual event. It is almost like a reunion. Everyone looks forward to it, clean lakes and rivers, and people with a changed attitude and sense of pride and ownership—the Government, private sector, media volunteering together, and we have seen this work to perfection.

It supports Keep America Beautiful, Inc.'s national effort. It is a savings to the Government. No doubt about this. The Greers Ferry program is a prime example of the spirit of Keep America Beautiful in action.

I thank you for the opportunity to appear here today and I will be glad to answer any questions.

Senator HECHT. Thank you very much.

Senator Bumpers, do you have some questions?

Senator **Bumpers**. Secretary Dawson, can you tell me how much the corps spends a year now, cleaning up litter on these, I believe you said 460 water resource projects?

Mr. **Dawson**. Senator Bumpers, I would ask that we provide that specific figure for the record, but I can tell you it is a very significant amount.

We estimate that careless littering accounts for up to $3 million of our recreation operations and maintenance budget request.

Senator **Bumpers**. Do you have any figure as to how much the corps saved last year by using volunteers on various of these areas?

[Subsequent to the hearing the corps submitted the following:]

In 1985 we received 160,000 hours of volunteer effort from 13,000 volunteers which was valued at $950,000.

Mr. **Dawson**. Mr. Garner might have an estimate at least at his facility.

Senator **Bumpers**. Carl, do you have a figure on how much you saved just for Greers Ferry?

Mr. **Garner**. We made an estimate that it would cost, if we cleaned up the 40 miles of road leading to the lake and the 300 miles of shoreline and 50 miles of river, somewhere between $25,000 and $30,000 annually.

Senator **Bumpers**. Incidentally, Carl, there is one thing you did not mention, and that is you give them all a free meal for coming up there, a big fish fry which is a great event.

How do you finance that?

Mr. **Garner**. It is financed by the donations I spoke of, $12,000. Coca-Cola Co. is the main sponsor. They buy all the fish. Of course, last year we cooked 1,450 pounds of catfish. We fed 4,000 people. Seven groups of entertainers appeared, and we have been able to get some big name entertainers, Grampa Jones, Joanne Castle, Gil Girard and others.

Senator **Bumpers**. They all donate their services?

Mr. **Garner**. Right. Everybody donates their time. Nobody gets paid on that day, Government employees included.

Senator **Bumpers**. What do you do? Do you pick up a lot of aluminum that is capable of being recycled?

Mr. **Garner**. Yes, we pick up a lot of aluminum around the lake, of course, and that is separated from the rest of the trash. The rest of the trash is taken to a sanitary landfill and Coca-Cola buys the aluminum.

Now, a lot of people save their aluminum during the year and bring it to this event so they can sell it. Also, we now have an aluminum collection center there in Heber Springs as a result of this cleanup.

Senator **Bumpers**. Secretary Dawson, let me ask you about the small reservation you have about the bill, the reporting requirement. I would not suggest burdening the corps or any other manager of a Federal facility with any paperwork on this. But it seems to me that just a summary of the success of the cleanup would be appropriate.

For example, you will be involved with the corps projects. The Forest Service would be involved with the forests, and so on. It seems to me that just an appropriate summary that somebody would send in, almost on an ad hoc basis, to say how many people participated, how many tons of litter they picked up, and so on would be instructive to us as to how well the thing is going.

The only reason I suggest that is as Carl Garner has pointed out, one of the prime benefits of this bill is this: The number of volunteers has grown each year since 1970 at the Greers Ferry Lake Cleanup, what what we now call the Great Arkansas Cleanup. And with that has come an awareness on the part of not only the people who participate, but other people who see it and read about it, about what littering costs. Carl has pointed out that littering has declined rather dramatically, simply because of the awareness level that is raised as a result of this.

The only reason I suggested reporting is, No. 1, I would like to know how much money we can save in this country under this bill through voluntary efforts.

No. 2, I would like to see if the amount of litter that we pick up on an annual basis actually declines.

Mr. DAWSON. Senator Bumpers, I think that is a good point, and with the appropriate legislative history I am sure it can be made clear that you are not intending to have us fill out a lot of forms, but just to keep a general record of accomplishments, and I think that would be helpful.

Senator BUMPERS. As a matter of fact, I would not mind putting a little sunset provision on it; say they just do it the first 3 years, so we could determine what the impact is, because I certainly do not want to burden the corps or anybody else with any paperwork.

The whole thrust of this thing is voluntary. Other than the fact that it makes people more aware, I think it is great for people to participate and develop a sense of respect for Federal lands.

As you know, Secretary Hodel has a program going. Take care of it; it is your land. And that is one of the main thrusts of this bill.

My bill does not cover the Federal Highway Administration. But any State highway administrator will tell you that one of their biggest expenses is picking up the rights-of-way, and I was just curious as to whether or not we might not extend the bill to the Highway Administration at some point in the future and save an awful lot of money.

Senator WALLOP [presiding]. I would say to the Senator from Arkansas, I know about that. One of the reasons some of the highways are not nearly as clean as they used to be is that they will not let us drive cattle down them anymore. I used to pick up a bunch of stuff, just walking along behind those critters. [Laughter.]

Senator BUMPERS. Well, let me say one thing, Senator Wallop. You have certainly enlightened me. That is one thing I would never have thought of as a reason for rights-of-ways having litter on them.

I think that concludes my questions. Secretary Dawson and Mr. Garner, I want to personally thank both of you very much for coming over and testifying in support of this bill. I do not think we will have any trouble getting it passed, maybe in time to start something this fall.

Incidentally, does the date agree with you, Secretary Dawson, the first Saturday after Labor Day? Does that seem like a suitable time for you?

Mr. DAWSON. Certainly. Yes.

Senator **Bumpers**. Fine. Now we can save $2 million a year with this and then you give the Little Rock Port Authority $2 million, and then we will all be happy. [Laughter.]

Senator **Bumpers**. Thank you, Mr. Chairman.

Senator **Wallop**. Thank you, Senator Bumpers.

On S. 1888, Mr. Parker.

STATEMENT OF JAMES M PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 1888

Mr. **Parker**. Mr. Chairman, we in the Department of the Interior enthusiastically support the objectives of S. 1888. It reflects the objectives of Secretary Hodel's "Take Pride in America" public awareness campaign which was just recently announced and is a fitting complement to that program.

We believe, however, that if the bill were to be amended in a few respects, it would enhance its effectiveness. We suggest that possibly the term "Federal lands" rather than "public lands" might be used.

The term "public lands" is defined in the Federal Land Policy and Management Act and is sometimes taken to mean only the lands administered by the Bureau of Land Management. Obviously, the intent of the bill is much broader than that.

In addition, we suggest that the Bureau of Reclamation be included as one of the specific Federal land management agencies listed. It adminsters about 7 million acres of land associated with water projects similar to the corps' and normally hosts over 44 million recreation visitor days a year.

While we agree that designation of one nationwide cleanup day as called for in the bill would be very useful as an educational and promotional event, we believe that the bill would more accurately reflect its objectives if it identified the cleanup day as one part of a more comprehensive program of voluntarism and cleanup which could extend over several days or perhaps even weeks or months.

We suggest that the statutory requirement in the bill for a plan is perhaps also perhaps unnecessary. This requirement adds additional costs and might tend to discourage innovative volunteer assistance in some cases. We also agree with the corps that an additional report to the Congress appears to be unnecessary, at least in terms of the Department of the Interior. This type of information could easily be included and is included in the annual reports already submitted by the agencies.

For these reasons we would recommend that the requirement for a plan and the report to Congress be deleted from the bill.

I would reiterate our strong support for S. 1888. I encourage and believe that our recommended amendments would enhance the bill's effectiveness. Designating a nationwide Federal Lands Cleanup Day as part of a more extensive volunteer program emphasis would be very useful to all Federal land managers as a promotional and educational tool. It would provide high public visibility and raise the level of public awareness which is a major emphasis of the Secretary's program, and provide opportunities for citizens and citizen's groups to voluntarily assume a degree of responsibility for one aspect of their lands, the Federal lands.

In addition, as the gentlemen from the corps have pointed out, the event could serve as an occasion for bringing together citizens' groups with diverse viewpoints on Federal land management to work side by side for a common goal, which we think would be helpful.

We would be pleased to work with the Congress on refining the bill along the lines that we have suggested.

Thank you.

[The prepared statement of Mr. Parker follows:]

MAR 4 1986

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER, AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 1888, A BILL "TO PROVIDE FOR A PROGRAM OF CLEANUP AND MAINTENANCE ON FEDERAL PUBLIC LANDS, NATIONAL PARKS, RECREATION AREAS, AND FOR OTHER PURPOSES."

I appreciate the opportunity to appear before the subcommittee today to discuss the Department of the Interior's position on S. 1888.

S. 1888 would designate the first Saturday after Labor Day of each year as "Public Lands Cleanup Day". It would direct the President to issue a proclamation calling upon the people of the United States to observe Public Lands Cleanup Day with appropriate ceremonies, programs, and activities.

The bill provides instructions for Federal land management agencies in the observance of the Cleanup Day at the Federal level and identifies those agencies as the Forest Service of the Department of Agriculture, the Bureau of Land Management, National Park Service, and Fish and Wildlife Service of the Department of the Interior, and the Army Corps of Engineers. Those agencies would be required to organize, coordinate, and participate with citizen volunteers and State and local agencies in cleaning and providing for the maintenance of Federal public lands, recreation areas, and waterways within their jurisdiction. Each agency would be required to plan activities on Cleanup Day that encourage continuing public and private sector cooperation in preserving the beauty and safety of our public lands, increase citizens' sense of ownership and community pride in these areas, reduce litter on public lands, along trails and waterways and other recreational areas, and maintain and improve trails, recreation areas, waterways, and facilities.

Before the first Cleanup Day that occurs after enactment of the bill, each Federal land management agency would be required to prepare a plan for such day along the lines specified in the bill. In addition, each of those agencies would be required to report to the Congress, within 90 days after the first Cleanup Day occurring after enactment of the bill, regarding each agency's success in observing Public Lands Cleanup Day and in implementing the agency's plan.

We enthusiastically support the goal of S. 1888. In fact, we would note that it reflects the goals of the Administration's "Take Pride in America" public awareness campaign and is a fitting complement to that program. Through this campaign, the Department of the Interior is working with the Departments of Agriculture and Army (Corps of Engineers) and other Federal, State, and local agencies, to encourage all Americans to take pride in their public lands and to instill in citizens a greater sense of ownership and responsibility for these lands. This campaign is aimed at publicly-owned lands under all jurisdictions. However, although we support the concept of S. 1888, we believe the bill should be amended in several respects.

The text of the bill appears to be significantly narrower in scope than the overall purpose described in the title of the bill since it emphasizes volunteer cleanup activities on only one day out of the year and only on land managed by the Federal Government.

S. 1888 provides no new authority to the Secretary of the Interior. The Bureau of Land Management, the National Park Service and other agencies in Interior are already actively engaged in pursuing volunteer involvement in cleanup projects similar to those outlined in the bill. In addition, through the Take Pride in America campaign, we hope to stimulate community awareness and inspire private sector involvement in public land stewardship activities. We see government's role as one of facilitating and encouraging all types of participation by individuals, citizen groups, and State and local governments in caring for our Nation's public lands.

While we agree that designation of a nationwide Public Lands Cleanup Day, as called for under S. 1888, would be a very useful educational and promotional event, we feel that the same results could be achieved from the proclamation required by Section 3 without the additonal administrative requirements prescribed by the bill. We suggest that statutory requirements in the bill for a plan and a report to Congress are unnecessary. These requirements would add additional costs to the Federal agencies. In addition, a formal detailed plan by Federal agencies might tend to discourage private sector innovation in volunteer assistance. The bureaus already compile annual statistics on their overall volunteer programs. An additional report to Congress on the activities of one day does not appear to be necessary. For these reasons, we recommend that the requirements for a plan and a report to Congress be deleted from the bill.

We favor a broader approach to a Public Lands Cleanup Day that would apply not only to lands under Federal jurisdiction but to lands under State and local jurisdiction as well. We have concerns that this legislation could be construed to apply only to the public lands as defined in the Federal Land Policy and Management Act under the jurisdiction of the Bureau of Land Management rather than to all Federal lands. Therefore, we suggest an amendment to clarify this point.

We believe that the bill would more accurately reflect its objectives if it identified Cleanup Day as only one part of a more comprehensive program to extend over other days, months, or even year-round. To concentrate all volunteer activities on only one day would not, of itself, constitute an effective cleanup and maintenance program for many Federal land areas. We would not want to see enactment of the bill result in agency field managers scheduling their major volunteer cleanup activities for only one day in an area where this would mean sacrificing effectiveness in order to be fully responsive to the bill. For example, n some areas agency managers and local citizen groups may find that they can make more effective and efficient use of the limited number of trucks available to them to haul litter to disposal sites if the work is spread over several weekends or over an entire season rather than if they tried to do it all in one 24-hour period. Furthermore, in some parts of the country, the date specified in the bill for Cleanup Day -- the first Saturday after Labor Day -- may not be a practical time to concentrate such activities.

I reiterate our support for the goals of S. 1888, and wish to express the Secretary's personal appreciation to the distinguished Senator from Arkansas, Mr. Bumpers, for his contribution to increasing our awareness of the need to promote volunteerism. Designation of a nationwide Public Lands Cleanup Day as part of a more extensive volunteer program would be useful for all Federal land managers as a promotional and educational tool. It would provide high public visibility and help raise the level of public awareness of opportunities for citizens and citizen groups to voluntarily assume a degree of responsibility for one aspect of Federal land management. In addition, the event could serve as an occasion for bringing together citizen groups with diverse viewpoints on Federal land management to work side by side for a common goal. We would be pleased to work with the Congress on refining the bill along the lines I've suggested.

This concludes my prepared statement. I will be pleased to respond to any questions you may have on the bill.

Senator WALLOP. Thank you.

Mr. MACCLEERY.

STATEMENT OF DOUGLAS W. MacCLEERY, DEPUTY ASSISTANT SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE, ON S. 1888

Mr. MACCLEERY. Thank you, Mr. Chairman.

The Department of Agriculture also strongly supports the concept and goal behind S. 1888. The Forest Service has long recognized the need and desire for active citizen participation in the improvement and cleanup of the national forests.

For example, last year 46,000 volunteers accomplished over $22½ million worth of environmental improvement on the national forests. This represented nearly 1,800 person-years of work. The Forest Service is encouraging this program and anticipates continuing expansion of this program next year.

Although we agree with the intent of the proposed legislation, we also share the concerns over the reporting provisions contained in section 4. We are providing that kind of information as a part of our annual report already, and we recommend that this section be amended.

Again, we support the concept behind S. 1888 and believe that an annual event of concerted volunteer effort is an appropriate recognition of the important and continuing contributions that volunteer citizens and groups make in maintaining and improving public lands.

That concludes my statement, Mr. Chairman.

[The prepared statement of Mr. MacCleery follows:]

Statement of
DOUGLAS W. MacCLEERY
DEPUTY ASSISTANT SECRETARY
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Committee on Energy and Natural Resources
Public Lands, Subcommittee on Reserved Water and Resource Conservation
U.S. Senate

March 4, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

We appreciate the opportunity to present our views on S.1888, "Public Lands Cleanup Act of 1985" which provides for a program of cleanup and maintenance on Federal public lands, national parks, recreation areas and for other purposes.

S.1888 provides for an annual national volunteer cleanup event benefiting public lands and facilities and is intended to instill a sense of pride and ownership in the citizens using these lands. We support enactment of S.1888 with an amendment.

The USDA Forest Service has long recognized the need for active citizen particicpation in the protection, improvement, and cleanup of the National Forest System lands. For example, in FY 1985 46,000 volunteers accomplished an estimated $22,500,000 of environmental improvement work under the provisions of the Volunteers in the National Forest Act of May 18, 1972 (P.L. 92-300, as amended). This represents nearly 1,800 person years of work. The Forest Service anticipates continuing expansion of this program in FY 1986. In addition, the Woodsy Owl Environmental Program has been used by the Forest Service and many other cooperating Federal, State, and local agencies as a symbol for supporting environmental improvement and combating pollution.

We agree with the intent of the proposed legislation, however we are concerned with the detailed reporting requirements of Sec. 4(c)(1) and (2) of the proposed bill. In the case of our existing volunteer program we do not require our field units to submit detailed advance plans nor do we feel it is necessary. We do however, develop a report that summarizes hours of volunteer work and the estimated value of that work which is summarized in our annual report to Congress. We believe this report is sufficient. We recommend that the special reporting requirements of S.1888 be deleted.

We support the intent of S.1888, we believe that an event of concerted volunteer effort is an appropriate recognition of the important and continuing contributions that volunteer citizens and groups make in maintaining and improving public lands. I would be pleased to answer any questions the committee may have on our current program or how our we would expect to proceed under the proposed legislation.

Senator WALLOP. Thank you, Mr. MacCleery.

Mr. Parker, would you give the Bureau's view on S. 1963?

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 1963

Mr. PARKER. On which one, sir?

Senator WALLOP. S. 1963.

Mr. PARKER. We appreciate the opportunity to comment on the Interior's Department's position on S. 1963. We have no objection to enactment of this particular bill which involves the New Mexico Institute of Mining and Technology in Socorro, NM, because fair market value would be paid for the lands to be acquired by the Institute, which involve some 8,501 acres.

Senator WALLOP. Mr. Parker, if you would forgive me for interrupting for one moment. If you would just give your statement on S. 1963 and have your statement on S. 1690 entered into the record, that would save you some time.

Continue on with what you were saying. The one on S. 1690 we will place in the record, and give your oral testimony on S. 1963 only.

Mr. PARKER. OK.

Senator DOMENICI. Mr. Chairman, on S. 1690, I agree with your process. I may very well be in a position in the not-too-distant future to withdraw the bill. My principal concern was the payment for the land which is used as an adjunct to a fair.

I think the community has or is about to concur and pay the market value instead of as I prescribed it in the bill. I understand all of their concerns. They principally were built around the payment and I do not think I need any testimony. I thank you for expediting that and moving on to the one that I am most concerned about.

Could I give a few remarks before you hear the testimony on S. 1963?

Senator WALLOP. Certainly. If you would indulge me, Mr. Parker.

Mr. PARKER. Certainly.

Senator DOMENICI. I guess you set him up.

STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator DOMENICI. First of all, Mr. Chairman, there is a typographical error. We ought to know that this is not 8.58 acres, but rather 8,501. That is a typographical error.

Senator WALLOP. Minimal. [Laughter.]

Senator DOMENICI. All right for our work around here.

Secondly, the change in the bill from its original introduction to the bill that is now before us has one very major concession, and that is it would not be contributed to the university, that is, New Mexico Tech. Rather, they would pay the fair market value for the land.

The purpose of the bill is to provide New Mexico Tech with enough land to continue testing which they are doing on land adjacent to it. It is valuable for the growth of their educational and research program.

New Mexico Tech, while it is a very small school, is internationally prominent now for work in explosive technology, research in testing military hardware in terms of the ability of various types of hardware to survive or not survive under certain degrees of explosive contact.

The Terminal Effects Research Analysis Group conducts research on defense system components for the U.S. Armed Forces and other agencies of the Government. They are beginning to develop a very significant private sector component. They will use land to test ammunition for various tanks; to blast barriers for the embassies abroad; and to test large explosive charges, propellants, and gun firings, so they need additional land surrounding the State land which they currently use.

Their present facility does not have enough usable space to meet these needs. This is an ideal situation since they have been doing this for some 30 years now. It requires that they pay $640,000 which I believe is agreed to be the market value. They will do the archeological survey. The bill reserves mineral rights. I would like to talk to the committee about that in terms of how we might make it more workable, subject to all valid existing permits, geothermal leases and the like; and last but not least it is vitally important, as I see it, to economic development in that part of my State. Also our Nation needs the continuation of these kinds of services in terms of the safest and most efficient use of military hardware, and thus the expenditure of our money.

I would ask that a statement by the president of the University, Dr. Lattman, be made a part of the record. He explains it in more detail, Mr. Chairman.

Senator **WALLOP**. By all means, it will be.

Senator **DOMENICI**. I thank you very much.

[The prepared statements of Senator Domenici and Dr. Lattman follow:]

STATEMENT OF SENATOR PETE V. DOMENICI
ON THE NEW MEXICO TECH LAND PURCHASE BILL

MARCH 4, 1986

Mr. Chairman, I am pleased that the Subcommittee is holding hearings on S. 1963, a bill which I introduced. This measure would direct the Secretary of the Interior to convey for fair market value approximately 8,502 acres of Bureau of Land Management land in Socorro County, New Mexico to the New Mexico Institute of Mining and Technology.

The land that will be conveyed in this bill is necessary so that valuable educational research and testing work at the Terminal Effects Research and Analysis group at the Institute can continue. The Institute's present field laboratory does not have enough useable space for these activities. If the Institute's present field laboratory is not expanded, a very important component of our Nation's defense-related research and testing capabilities will be put in jeopardy. Therefore, this legislation is not only very important for the University and for New Mexico, but for the Nation as well.

NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY

New Mexico Institute of Mining and Technology, or New Mexico Tech as we New Mexicans call it, is located in the City of Socorro, New Mexico, which lies approximately 75 miles south of Albuquerque in the Rio Grande Valley. Founded as the New Mexico School of Mines when New Mexico was still a territory, New Mexico Tech has become a highly regarded college and research center. It has gained international prominence for the work it has conducted in the areas of petroleum recovery, explosive technology, and military hardware research.

New Mexico Tech encompasses a small college (approximately 1300 undergraduate and graduate students) plus three other divisions: the State of New Mexico Bureau of Mines and Mineral Resources, the New Mexico Petroleum Recovery Research Center, and the Research and Development Division. The Bureau of Mines is the official State agency responsible for original investigations and recommendations concerning the development of New Mexico's considerable mineral and energy resources. The Petroleum Recovery Research Center is the newest of New Mexico Tech's divisions. Since its establishment in 1975, the Center has gained wide recognition for its studies on new and improved methods of recovering oil and gas. The Research and Development Division supports research throughout New Mexico Tech and operates a number of geophysical laboratories, including a new Center for Explosives Technology Research and the Terminal Effects Research and Analysis group.

TERMINAL EFFECTS RESEARCH AND ANALYSIS GROUP

In 1949, New Mexico Tech established the Terminal Effects Research and Analysis [TERA] group. TERA conducts research on defense system components intended for use by the United States armed forces. This work involves large explosive charges, rocket propellants, and long-range gun firings, all of which require large expanses of land for purposes of safety and security. Accordingly, TERA includes a ten square mile field laboratory on State land for these defense-related research and testing projects. The activities of this laboratory have steadily increased to a level of more than three million dollars annually. The customer list of the laboratory includes all three military services and most major defense contractors. The statement of Dr. Larry Lattman, President of New Mexico Tech, describes in greater detail the structure and activities of TERA.

THE NEED FOR ADDITIONAL LAND

All branches of the military are looking to TERA to assume more of the testing work which is required to fulfill their individual missions. The current emphasis on economic development, particularly through the Rio Grande Research Corridor initiative, also is resulting in an increased demand for TERA's facilities. To meet these demands, the field laboratory will have to expand beyond its current boundaries. However, all the usable, meaning horizontal, land available within the current TERA facility is occupied.

There currently is land available for the expansion of the laboratory facilities. This land lies south and west of the present field laboratory and is contiguous to the present laboratory boundaries. The land is owned by the Federal Government and is administered by the Bureau of Land Management of the Department of the Interior.

It is this land which S. 1963 seeks to transfer to New Mexico Tech for use as part of the TERA laboratory. This arrangement would allow TERA to continue its vital work and would permit TERA to make timely commitments to potential customers, particularly private industry customers whose inflexible schedules usually require their receiving on-the-spot, guaranteed agreements for facilities.

The land proposed to be transferred meets several requirements. Most importantly, it is contiguous to the present laboratory and, thus, is [illegible] situated for security purposes. It also meets both line-of-site and safety requirements. Additionally, the land will allow for economies of operation that might otherwise not exist in a location further removed from the existing facility. Finally, the expanded facilities will also provide TERA with certain capabilities which do not now exist -- a longer range, an ability to do larger tests, less down time, and thereby greater efficiency.

Let me assure you that TERA's use of this land would be carried on with the highest possible standards of safety and security. For 37 years, this group has been doing explosives testing and research on lands in this area. The research does not consist of dropping bombs or shooting missiles, either of which could land unexploded. Rather, the research consists of the explosion of individual ordnance and the firing of individual rounds of various types of ammunition under extremely controlled conditions that preclude the possibility of having unexploded ordnance. There is no likelihood of contaminating the land to be transferred with unexploded ordnance of other hazardous materials.

S. 1963

S. 1963 authorizes the Secretary of the Interior to convey three parcels of land totalling 8,501.55 acres, more or less, to New Mexico Tech. This land is specifically designated for use for educational and research purposes, and it is intended that the land be used by the TERA group to expand its field laboratory. New Mexico Tech will pay fair market value for the land, which is estimated to be about $75 an acre, or a total of approximately $640,000. The University intends to use State general obligation bonds to purchase this land. A measure providing these funds has been approved by the New Mexico State Legislature and the Governor and now awaits approval by the voters.

The transfer of the land is subject to all valid existing rights. There are currently three geothermal leases (comprising approximately 3,000 acres) and nine mining claims on the subject lands. It is not anticipated that these rights would be exercised, but New Mexico Tech is prepared to work out agreements with the possessors of these rights if the possessors decide to develop these resources. There also are two grazing permittees on the subject lands. New Mexico Tech has negotiated agreements with these permittees which will allow the joint use of these lands. The mineral rights of the land to be conveyed are reserved to the United States under the bill.

Prior to the transfer of the land, New Mexico Tech must undertake a survey of the archeological resources of the land. New Mexico Tech is obligated to work with the State of New Mexico Historic Preservation Office to develop measures which will mitigate, to the extent possible, any damage to these resources. The conveyance of the land is conditioned upon the implementation of the mitigation measures identified.

It should be noted that alternatives to this land transfer, such as leasing, a land swap, a conveyance pursuant to the Federal Land Policy and Management Act or transfer under the Recreation and Public Purposes Act, were explored and rejected as either not permitted under the law or unworkable. It was determined that this statutory land transfer was the most proper and effective way to proceed.

CONCLUSION

It is obvious that a lot of worthwhile activity is going on with the TERA group at New Mexico Tech. This bill will guarantee the continuation of the research and development activities at TERA which are so vital to our national interest.

S. 1963 will provide New Mexico Tech with the additional land to fulfill TERA's defense-related commitments. This land meets all the requirements for safe and efficient operations. The Federal Government will receive fair market value for the land. Existing rights to the land and the archeological resources of the property will be adequately protected. I, therefore, hope that this measure will have the full support of each member of this Subcommittee.

January 24, 1986

Mr. Chairman:

I, Laurence H. Lattman, President of the New Mexico Institute of Mining and Technology, wish to submit this formal statement as justification for the conveyance of Bureau of Land Management acreage, at fair market value, to the Institute.

The New Mexico Institute of Mining and Technology is located in the Rio Grande Valley, some 75 miles south of Albuquerque. New Mexico Tech, as it is commonly known, is a small, highly regarded institution devoted to teaching and research. It is our research endeavors which prompted Senator Domenici to introduce S. 1963 on behalf of himself and Senator Bingaman.

To fully appreciate the nature of this request, it is necessary to briefly describe the activities of the Terminal Effects Research and Analysis (TERA) group which is a component of the Research and Development Division, one of four divisions of New Mexico Tech. TERA evolved from ordnance research projects during World War II and has been a part of the Tech campus since 1949. Over the years, TERA's combination of knowledge and experience, specialized test facilities, fast-turnaround, and reasonable cost have served to make it an important component of this nation's defense-related research and testing capabilities.

TERA expertise centers on experimental development, evaluation, and analysis of defense-system components intended for use by the United States Armed Forces. Primarily known for original work in the fields of aircraft vulnerability, anti-aircraft-missile warhead design, and warhead evaluation, TERA has also been involved in the design and evaluation of missile warheads for anti-ship, anti-tank, and other targets, and in the design and evaluation of gun-fired projectiles for similar targets. The group was deeply involved in the pioneering design, test, and evaluation efforts for the TALOS, TARTAR, and TERRIER warhead systems and has more recently been involved in the SEA-SPARROW, PHOENIX, Standard Missile-2, AMRAAM, Chaparral, ROLAND and PATRIOT missile systems projects.

Although major emphasis historically has been on work with defense systems under U. S. Navy contracts, TERA has carried out many projects for other government services and agencies and for private industrial contractors as well. United States defense clients include the Naval Surface Weapons Center/Dahlgren Laboratory; Naval Civil Engineering Laboratory; Naval Ship Research and Development Command; Army Ballistic Research Laboratory, Army Human Engineering Laboratory; Pictinny and Redstone Arsenals; Eglin and Kirtland Air Force Basses; Air Force Armament Test Laboratory; Air Force Ballistic Missile Office; Air Force Technical Director; Rock Island Arsenal; Army Tank and Automotive Command; Army Research and Development Command; Naval Weapons Center.

The multi-million-dollar field laboratory of TERA is situated in mountainous terrain on New Mexico Tech land, a few minutes from the main campus. The 44 already developed test facilities, and associated equipment, provide for an unusually self-contained and self-sufficient system for conducting research, development and analysis. TERA can fabricate weapon components under study, provide a field laboratory for testing these, and perform sophisticated computer analysis of test results. This close-knit interaction permits theoretical analysis, practical experience, fabrication, and field testing to blend in a remarkably productive and cost-effective manner.

The TERA full-time staff numbers approximately 203, including 52 research professionals and technical assistants. The employee roster includes machinists, camera and ordnance technicians, field construction personnel, mechanics, guards, and an office staff. An additional and valued component of this research and testing effort is an exceptionally capable undergraduate and graduate student body, and student assistants can be found in all phases of the TERA effort.

In recent years, the spread of civilian population centers has made it increasingly difficult for federal laboratories and project offices to carry out certain types of research and development activities at their locations. As a consequence, all branches of the military are increasingly looking to TERA to assume more of the testing work which is required to fulfill their individual missions. This work involves large explosive charges, rocket propellants, and long-range gun firings, all of which require large expanses of land for purposes of safety and security.

Recent or present projects require a 3-kilometer (1.8-mile) gun range to test 120 mm ammunition for the M-1 Abrams Tank, an area for testing 10,000-pound explosive charges against blast barrier concepts for the safety and design of U. S. Embassies abroad, and a 5-kilometer range for a testbed electromagnetic rail gun. These project needs, and numerous others, are extensions of on-going research and require large expanses of secure horizontal contiguous land area.

The present field laboratory does not have sufficient usable land available to meet the above needs. While the requested acreage will greatly expand the size of the TERA field laboratory, current contract negotiations with the military would, if successfully concluded, effectively use all of this additional land. The land in question fulfills both line-of-site and safety requirements. Importantly, it is contiguous to the present laboratory and thus well situated for security purposes. This land will also allow economies of operation that might otherwise not exist in a location removed from the existing facility.

New Mexico Tech is by far the largest employer in the Socorro community. Our research endeavors as well as other economic development initiatives, including the development of a research park now underway, have the support of a citizenry interested in expanded, quality employment opportunities. The proposed legislation (S. 1963) is fully supported in writing by the two ranchers who are grazing leaseholders of the affected land. It is also appropriate to recognize the assistance provided the Institute's request by the Socorro office of the Bureau of Land Management.

I wish to express concern with the wording of sec. 3, page 3, entitled "Reservation of Rights". While I certainly have no problem with the reservation to the United States of "all minerals that may be found in the lands," there could arise a major problem because of lines 7, 8, 9 of this section. For example, if a person were against defense-oriented research, he or she might apply for a permit from the U. S. government, enter upon the land, and prevent its use for ordnance-related research for a protracted period. Thus, we would be effectively barred from using the land and meeting Department of Defense schedules.

In summary, passage of S. 1963 will provide New Mexico Tech's TERA group with additional land to fulfill our defense-related commitments. This land contiguous to the present site will also meet our requirements for safety and security while providing for economies of operation.

Laurence H. Lattman

Senator WALLOP. Thank you, Senator.

And thank you, Mr. Parker, for indulging us in the interruption.

Mr. PARKER. You are welcome.

Senator WALLOP. And one more, as long as I have apologies flying around the room.

Mr. Dawson and Mr. Garner, we have no further need for your presence here if you wish to get back.

Mr. DAWSON. Thank you very much, Mr. Chairman.

Senator WALLOP. Now you can go on, I am almost certain.

STATEMENT OF JAMES M. PARKER, ON S. 1963—RESUMED

Mr. PARKER. Senator Domenici has covered very well the purposes of the bill and we have no objection to enactment of S. 1963 since fair market value would be paid for the lands to be acquired by the Institute.

My detailed statement outlines several specific elements that would be involved in the conveyance, such as the proposed use of the land, alternatives that were considered to acquire the land, some problems relating to possible permanent contamination of the land, protection of archeological and cultural sites, protection of valid existing mineral rights, and disposition of grazing rights, all of which we believe are adequately covered in the legislation.

Again, we would support enactment of the proposed legislation as it is presently written.

[The prepared statements of Mr. Parker on S. 1963 and S. 1690 follow:]

MAR 4 1986

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 1963, A BILL "TO DIRECT THE SECRETARY OF THE INTERIOR TO CONVEY CERTAIN INTERESTS IN LANDS IN SOCORRO COUNTY, NEW MEXICO, TO THE NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY."

I appreciate the opportunity to appear before the Subcommittee today to discuss the Department of the Interior's position on S. 1963.

S. 1963 would direct the Secretary of the Interior to convey to the New Mexico Institute of Mining and Technology in Socorro, New Mexico, a fair market value, and subject to valid existing rights, all right, title and interest of the United States in approximately 8,501.55 acres of public lands in Socorro County, New Mexico, to be used for research and education. The bill would reserve to the United States all minerals in the lands, together with the right of the United States, its permittees, lessees, or grantees to prospect for, mine, and remove such minerals.

The bill would require the Institute to perform and provide to the Secretary of the Interior, prior to the conveyance, a survey of the archeological resources of the area proposed for conveyance. The survey would be required to identify the mitigation measures, if any, that the Institute would implement, in coordination with the State of New Mexico Historic Preservation Office. The proposed conveyance would be conditioned on the implementation of such measures.

We have no objection to the enactment of S. 1963, because fair market value would be paid for the lands to be acquired by the Institute. We bring to your attention several specific elements that would be involved in the conveyance.

The New Mexico Institute of Mining and Technology is a State-supported school located in Socorro, New Mexico, immediately east of the 8,501.55 acres proposed for transfer in S. 1963. The Institute is interested in competing for contracts to do various types of research, including research dealing with advanced weapons systems known as Technical Explosive Research Assistance. Acquisition of the land involved in S. 1963 would allow the school to compete for these research contracts by providing the necessary space for the construction of new research facilities, including weapons testing ranges.

Representatives of the New Mexico Institute of Mining and Technology have been in contact with Bureau of Land Management (BLM) representatives in New Mexico for the purpose of obtaining authority to use the proposed expansion area. BLM officials advised the Institute that they could purchase the lands at their fair market value, as provided in section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), or acquire the lands through an exchange of lands between the Federal Government and the State of New Mexico under section 206 of FLPMA. However, the proposed transfer could be accomplished under either of these authorities only if the land use plan for the area indicates that the lands are suitable for disposal. The current land use plan for the area does not identify the lands as being suitable for disposal.

The proposed use of the lands for weapons testing could result in the permanent contamination of the land. This precludes BLM from authorizing the use of the land through issuance of permits and leases under FLPMA, because the United States would be responsible for the contaminated land upon the termination of the permit or lease.

The Bureau of Land Management has been advised that the area sought by the Institute has a number of archeological sites. S. 1963 addresses this concern by requiring, as a condition of the conveyance, the implementation of any mitigation measures identified in the archeological survey.

The lands proposed for conveyance under S. 1963 have been identified as being within a known geothermal resource area, and three geothermal leases, comprising approximately 3,000 acres, exist on the property. The rights of the lessees would be protected by section 1 of S. 1963.

There are nine mining claims on the lands. These rights would also be protected under the provisions of section 1 of S. 1963, and the persons holding the mining claims could obtain patents to the claims if they are determined to be valid. If S. 1963 is enacted and the lands are transferred to the Institute, these are matters it will have to address in planning for the use of the lands.

Finally, we note that the lands involved in the proposed transfer have a cattle carrying capacity of 974 animal unit months, which are allotted to two individuals under BLM permits that will expire on February 10, 1991. A grazing permit conveys a privilege, not a right. Therefore, the permits could be cancelled at any time. However, the Federal Land Policy and Management Act of 1976 requires 2 years' notice prior to the cancellation of a grazing permit, except in cases of emergency. We do not believe that exception would apply here. Perhaps the bill should address this question more specifically.

This concludes my statement. I will be pleased to respond to any questions on this subject.

MAR 4 1986

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 1690, A BILL "FOR THE TRANSFER OF CERTAIN INTERESTS IN LANDS IN DONA ANA COUNTY, NEW MEXICO, TO DONA ANA COUNTY NEW MEXICO FOR THE USE AS A FAIRGROUNDS."

I appreciate the opportunity to discuss with you today, S. 1690, a bill which would direct the Secretary of the Interior to convey approximately 141 acres of public land to Dona Ana County, New Mexico.

The County would be required to use the lands as part of its fairgrounds and for other public purposes and existing uses consistent with that use. All minerals would be reserved to the United States. If the lands described in the bill are used for any purpose other than those for which the conveyance is authorized, title to the lands would immediately revert to the United States. The conveyance directed by S. 1690 would be contingent upon the United States being reimbursed by Dona Ana County for administrative costs incurred in connection with the bill.

We oppose enactment of S. 1690.

The land in question is Federal land acquired under the Bankhead Jones Act. It comprises approximately 141 acres about 12 miles west of Las Cruces and is adjacent to the Dona Ana County Fairgrounds. It has been used by Dona Ana County for about 15 years under the land used permits issued by the Bureau of Land Management as a part of the County Fairgrounds. The improvements in the area consist of an oval stock car race track, parking lot, restrooms, bleachers, electricity, telephone and water.

Dona Ana County is presently using the land under Federal permit. However, since enactment of the Federal Land Policy and Management Act in 1976, such permittees on public lands have been required to pay full fair market rental, and such public lands can be sold only on payment of full fair market value. Since 1983, the County's permit for the subject tract has required payment of fair market rental upon demand after appraisal. The estimated fair market annual rental of the land is $14,500 and the fair market value is $141,000. To date, no rental payments have been requested or received from the County. Normally, if lands are used for public purposes they can be conveyed for a nominal price under the Recreation and Public Purposes Act. However, because the land described in S. 1690 was acquired under the Bankhead-Jones Act, it cannot be conveyed under the Recreation and Public Purposes Act.

Section 203 of the Federal Land Policy and Management Act requires BLM, when disposing of public lands, to receive fair market value as compensation. BLM believes S. 1690 is inconsistent with this congressional mandate. Thus, we oppose S. 1690.

This concludes my statement. I will be pleased to respond to any questions you may have.

Senator WALLOP. Thank you very much.

What I am going to do now is ask the departments to go through the other bills as I call them off and give their position on each.

Senator DOMENICI. Mr. Chairman, might I just ask one question of Mr. Parker?

Senator WALLOP. Oh, I am sorry. Yes.

Senator DOMENICI. Mr. Parker, does S. 1963 preclude mining claims on the land?

Mr. PARKER. Section 3 of the bill could be interpreted to limit mining claims, but the lanaguage there is not entirely clear on that issue. If that is the intent we, I think, would suggest some clearer language in section 3 which would specifically exclude that land. The way it is written now, it infers that but it is not entirely clear.

Senator DOMENICI. Mr. Chairman, I greatly appreciate the answer because it is not our intention to preclude it. On the other hand, we can draft some language which recognizes the fact that while the land is not withdrawn from mineral entry the access may be limited for specific periods. From time to time, activities will occur on this land where people are precluded from entry for a day or 2 or 2 hours. We want to try to draft language which preserves the right, but protects the entrant so that we do not have a conflict in that regard. I think we can do that with their assistance.

Thank you very much, Mr. Chairman.

Senator **Wallop**. Thank you.

Do you have other inquiries to make?

Senator **Domenici**. That is it.

Senator **Wallop**. Then what I am going to try to do is pick up testimony on these other assorted bills, so that we can perhaps let the administration witnesses go back downtown. So if you would discuss S. 1021/H.R. 1795.

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 1021/H.R. 1795

Mr. **Parker**. Thank you.

S. 1021 and H.R. 1975 are identical bills. They provide that restrictions set forth in section 5 of the act of April 21, 1806, shall not apply to two tracts of land in Adams County, MS.

There is a long history, Mr. Chairman, going back to 1803, which I think is covered in my statement. If that is entered in the record, I think we can just pass on from that.

Senator **Wallop**. It will be.

Mr. **Parker**. It is our understanding that the purpose of these bills is to remove any possible cloud of title that may interfere with future conveyance of the 1-acre tract involved in the 1945 and 1984 conveyances that are pointed out in the history of the bill.

There is no longer any Federal interest in that 1-acre tract in question, and furthermore the requirement of the 1806 act that the land be used as a common merely expressed what we believe was a desire of the Congress and was not meant to perpetually exclude alternative uses for that land. We believe this is reinforced by the fact that no reversionary or other enforcement authority was included in the act. Therefore, we would not object to enactment of S. 1021 or H.R. 1795.

[The prepared statement of Mr. Parker follows:]

MAR 4 1986

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 1021 AND H.R. 1795, BILLS "TO EXEMPT CERTAIN LANDS IN THE STATE OF MISSISSIPPI FROM A RESTRICTION SET FORTH IN THE ACT OF APRIL 21, 1806."

I appreciate the opportunity to appear before the Subcommittee today to discuss the Department of the Interior's position on S. 1021 and H.R. 1795.

S. 1021 and H.R. 1795 are identical bills that provide that the restriction set forth in section 5 of the Act of April 21, 1806, shall not apply to two tracts of land in Adams County, Mississippi, identified in the bills. Section 5 of the 1806 Act prohibited the cultivation or the construction of buildings on the land and required that the land be planted with trees and preserved as a common.

The history of the lands in question goes back to 1803 when, by the Act of March 3, 1803 (2 Stat. 223), Congress directed the survey of lands in the Mississippi Territory. Section 12 of that Act directed the sale of lands of the United States in the Mississippi Territory, but excepted certain lands from the sale. Included in the exception were 36 sections to be "located" by the Secretary of the Treasury for the use of Jefferson College, and not more than two town lots in the town of Natchez and not more than 30 acres of an adjoining outlet, to be "located" by the Governor of Mississippi Territory for the use of Jefferson College.

In December 1803, the two town lots and the outlet referred to in the March 3, 1803, Act were "located." The locations were filed in the office of the Governor of the Mississippi Territory, but were never filed for record in the General Land Office of the United States.

Subsequently, by the Act of April 21, 1806 (2 Stat. 401), the City of Natchez was granted approximately 30 acres of land of the United States with the proviso that the land be neither cultivated nor occupied by buildings, but that it be planted with trees, and preserved as a common. The 30 acres granted by the 1806 Act were the same parcels as the two lots and the outlet that were to be located for Jefferson College under the 1803 Act. Although the 1806 Act restricted the use of the 30 acres, it did not prescribe the action that should be taken if the restriction was violated.

Jefferson College instituted a suit in ejectment in the Circuit Court of the Territory of Mississippi, against the City of Natchez, alleging that the college had title to the lands involved in the 1803 and 1806 Acts. In 1822 the Court found the land to be the property of Jefferson College. However, the case remained open until November 3, 1827.

On November 3, 1827, the City of Natchez and Jefferson College reached an agreement whereby approximately 25 acres of the 30 acres described in the 1806 Act were recognized as being the property of Jefferson College. The remaining five acres were recognized as belonging to the City of Natchez. The agreement specified that the five acres were to be used as a park. This agreement was executed in order to settle the ejectment action. In the period since 1827, the 25-acre portion of the 30-acre tract has been fully developed with commercial and residential properties.

On July 5, 1872, approximately one acre of the five acres that were recognized as belonging to the City of Natchez, was sold by the City to the Natchez, Jackson and Columbus Railroad. The railroad erected a depot and warehouses on the one-acre tract. The remaining four acres were retained by the City and used a public common. On June 20, 1945, the Yazoo and Mississippi Valley Railroad, successor to Natchez, Jackson and Columbia Railroad, conveyed the one acre back to the City of Natchez.

The City of Natchez conveyed a portion of the one-acre tract to Mr. Sim C. Callon on June 12, 1984. Located on this property are a freight warehouse and a parking lot. The portion of the one-acre tract that is still owned by the City is occupied by the old railroad depot which has been converted into a commercial restaurant.

It is our understanding that the purpose of these bills is to remove any possible cloud on the title which may interfere with future conveyance of the one-acre tract involved in the 1945 and 1984 conveyances.

There is no longer any Federal interest in the one-acre tract in question. Furthermore, the requirement of the 1806 Act that the lands be used as a common merely expressed the desire of the Congress and was not meant to perpetually exclude alternate uses. This is reinforced by the fact that no reversionary or other enforcement authority was included in the Act. Therefore, we would not object to the enactment of S. 1021 or H.R. 1795.

This concludes my prepared statement. I would be happy to answer any questions you may have on this legislation.

Senator WALLOP. I thank you. And we have, as well, a statement for the record on S. 1021 from Senator Cochran.

[The prepared statement of Senator Cochran follows:]

STATEMENT OF SENATOR THAD COCHRAN
TO
SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER, AND RESOURCE CONSERVATION

S. 1021 AND H.R. 1795
MARCH 4, 1986

MR. CHAIRMAN, I WANT TO THANK YOU AND THE SUBCOMMITTEE FOR HOLDING THIS HEARING ON S. 1021, A BILL I INTRODUCED ON BEHALF OF THE CITY OF NATCHEZ, MISSISSIPPI, TO REMOVE CERTAIN RESTRICTIONS FROM PROPERTY IN THAT CITY.

THIS BILL IS NONCONTROVERSIAL, MR. CHAIRMAN. THE DEPARTMENT OF THE INTERIOR HAS NO OBJECTION TO ITS ENACTMENT, AS EVIDENCED BY A FEBRUARY 6, 1986, LETTER TO CHAIRMAN MCCLURE BY DEPUTY ASSISTANT SECRETARY JAMES E. CASON. (ATTACHMENT)

THE HOUSE PASSED IDENTICAL LEGISLATION, H.R. 1795, BY UNANIMOUS CONSENT, ON NOVEMBER 4, 1985.

MR. CHAIRMAN, THIS BILL SEEKS TO EXEMPT A SMALL PARCEL OF LAND FROM A RESTRICTION CONTAINED IN THE ORIGINAL GRANT TO THE CITY OF NATCHEZ BY ACT OF CONGRESS IN 1806. THE PROVISO RESTRICTED THE USE OF THE LAND GRANTED TO A PARK, OR "COMMONS." ALL OF THE PROPERTY OWNED BY THE CITY WAS USED AND IS BEING USED AS A COMMONS, EXCEPT FOR THE SMALL PORTION IN QUESTION, WHICH WAS CONVEYED BY THE CITY TO THE NATCHEZ, JACKSON, AND COLUMBUS RAILROAD COMPANY IN 1872.

THIS PARTICULAR PART OF THE PROPERTY WAS NEVER USED AS A COMMONS. THE RAILROAD BUILT A STATION AND WAREHOUSES ON THE ONE-ACRE PARCEL. THE LAND WAS RECONVEYED TO THE CITY IN 1945, AND, IN 1984, A SMALL PART OF THAT WAS CONVEYED TO MR. SIM CALLON, OF NATCHEZ, MISSISSIPPI. THE PARCEL IS NOW USED FOR COMMERCIAL PURPOSES -- THE CITY HAS LEASED THE STATION FOR THE OPERATION OF A RESTAURANT, AND MR. CALLON USES HIS AS A PARKING LOT FOR EMPLOYEES OF HIS BUSINESS, CALLON PETROLEUM.

AS IS NOTED IN MR. CASON'S LETTER, THERE IS NO LONGER A FEDERAL INTEREST IN THE ONE-ACRE TRACT IN QUESTION. THE PROVISION IN THE ORIGINAL GRANT "WAS NOT MEANT TO PERPETUALLY EXCLUDE ALTERNATE USES," AS NO REVERSIONARY OR OTHER ENFORCEMENT AUTHORITY WAS INCLUDED IN THE ACT.

MR. CHAIRMAN, I APPRECIATE YOUR CONSIDERATION OF THIS LEGISLATION. I HOPE YOU AND THE MEMBERS OF THE SUBCOMMITTEE WILL AGREE TO REPORT THIS BILL IN ORDER TO REMOVE ANY POSSIBLE CLOUD ON THE TITLE WHICH MAY INTERFERE WITH FUTURE CONVEYANCES OF THIS PROPERTY.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SENATE COMMITTEE ON FEB - 6 1986
ENERGY AND NATURAL RESOURCES
RECEIVED
FEB 06 1986
WASHINGTON, D.C. 20510

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on H.R. 1795 and S. 1021, identical bills "To exempt certain lands in the State of Mississippi from a restriction set forth in the Act of April 21, 1806."

We would not object to enactment of H.R. 1795 and S. 1021.

H.R. 1795 and S. 1021 would remove the restriction set forth in the proviso in section 5 of the Act of April 21, 1806 (2 Stat. 401) as it applies to two described tracts in Adams County, Mississippi.

Section 11 of the Act of March 3, 1803 (2 Stat. 223), directed the survey of lands in the Mississippi Territory. Section 12 of that Act directed the sale of the lands of the United States in the Mississippi Territory, but excepted certain lands from the sale. Included in the exception were 36 sections to be located by the Secretary of the Treasury for the use of Jefferson College, and ". . . such town lots not exceeding two in the town of Natchez, and of such an outlet adjoining the same, not exceeding thirty acres . . . to be located by the governor of the Mississippi Territory, for the use of the said college . . . ."

In December 1803, the two town lots and the outlet referred to in the March 3, 1803, Act were "located." The locations were filed in the office of the governor of the Mississippi Territory, but were never filed for record in the General Land Office of the United States.

Subsequently, under the terms of section 5 of the Act of April 21, 1806 (2 Stat. 401), the City of Natchez was granted approximately 30 acres of land of the United States with the proviso that the land " . . . be neither cultivated, nor occupied by buildings, but that it be planted with trees, and preserved as a common . . . ." The 30 acres granted by the 1806 Act comprise the same parcels as the two lots and the outlet that were to be located for Jefferson College under the 1803 Act. Although the 1806 Act restricted the use of 30 acres, it did not prescribe the action that should be taken if the restriction were violated.

Jefferson College instituted a suit in ejectment in the Circuit Court of the territory of Mississippi, against the City of Natchez, alleging that the college had title to the lands involved in the 1803 and 1806 Acts. In 1822 the Court found the land to be the property of Jefferson College. However, the case remained open until November 3, 1827.

On November 3, 1827, an agreement was entered into between the City of Natchez and Jefferson College, whereby approximately 25 acres of the 30 acres described in the 1806 Act were recognized as being the property of Jefferson College. The remaining five acres were recognized as belonging to the City of Natchez. The agreement specified that the five acres were to be used as a park. This agreement was executed in order to settle the ejectment action. In the period since 1827, the 25-acre portion of the 30-acre tract has been fully developed with commercial and residential properties.

On July 5, 1872, approximately one acre of the five acres that were recognized as belonging to the City of Natchez, was sold by the City to the Natchez, Jackson and Columbus Railroad. The railroad erected a depot and warehouses on the one-acre tract. The remaining four acres were retained by the City and used as a public common. On June 20, 1945, the Yazoo and Mississippi Valley Railroad, successor to Natchez, Jackson and Columbus Railroad, conveyed the one acre back to the City of Natchez.

The City of Natchez conveyed a portion of the one-acre tract to Mr. Sim C. Callon on June 12, 1984. Located on this property are a freight warehouse and a parking lot. The portion of the one-acre tract that is still owned by the City of Natchez is occupied by the old railroad depot which has been converted into a commercial restaurant.

It is our understanding that the purpose of these bills is to remove any possible cloud on the title which may interfere with future conveyances of the one-acre tract involved in the June 20, 1945, and June 12, 1984, conveyances.

There is no longer any Federal interest in the one-acre tract in question. The requirement of the 1806 Act that the lands be used as a common merely expressed the desire of the Congress and was not meant to perpetually exclude alternate uses. This is reinforced by the fact that no reversionary or other enforcement authority was included in the Act. Therefore we would not object to enactment.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

James E Cason

James E. Cason

DEPUTY ASSISTANT SECRETARY

Senator **Wallop**. Now, If you would discuss S. 1638/H.R. 1593.

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 1638/H.R. 1593

Mr. **Parker**. S. 1638 and H.R. 1593 are also similar bills that would direct the Secretary of the Interior to release certain conditions contained in a patent by which the United States conveyed some 40 acres of land to Jerome, AZ, for cemetery or park purposes in 1915.

That was done under the authority of the act of September 30, 1890. The act gave cities and towns the right to purchase public lands for cemetery or park purposes, but required that the mineral rights be reserved for the United States in cases where the city or town was within a mining district.

We have no objection to the enactment of S. 1638 and H.R. 1593. They would require the release of the specification in the patent that the land be used for cemetery and park purposes.

The act of 1890, while giving the cities and towns the right to purchase public lands for those purposes, also contained no expressed reverter provisions nor does the legislative history give any indication that the Congress intended to reserve reversionary interests.

The patent to the town of Jerome does not contain any reversionary clause. The only indication that the conveyance was for a cemetery or park purpose is the reference in the patent to the 1890 law under which it was issued.

In addition, the patent conveys the property forever and for these reasons it would appear that this legislation is unnecessary. However, we have no objection to the release of the restrictions by the Congress if it would remove any possible cloud on the title.

There is one technical error in H.R. 1593. The patent number on page 2, line 3, should be 497894.

[The prepared statement of Mr. Parker follows:]

MAR 4 1986

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE ON S. 1638 AND H.R. 1593, BILLS "TO DIRECT THE SECRETARY OF THE INTERIOR TO RELEASE ON BEHALF OF THE UNITED STATES CERTAIN RESTRICTIONS IN A PREVIOUS CONVEYANCE OF LAND TO THE TOWN OF JEROME, ARIZONA."

I appreciate the opportunity to appear here today to discuss the Department of the Interior's views on S. 1638 and H.R. 1593.

S. 1638 and H.R. 1593 are similar bills that would direct the Secretary of the Interior to release certain conditions contained in a patent by which the United States conveyed 40 acres of land to Jerome, Arizona, for cemetery or park purposes in 1915, under the authority of the Act of September 30, 1890. The Act gave cities and towns the right to purchase public lands for cemetery and park purposes, but required that the mineral rights be reserved to the United States, in cases where the city or town was within a mining district.

We have no objection to the enactment of S. 1638 and H.R. 1593.

S. 1638 and H.R. 1593 would require the release of the specification in the patent that the land be used for cemetery or park purposes. The Act of September 30, 1890, while giving cities and towns the right to purchase public lands "for cemetery or park purposes," contained no express reverter provision, nor does its legislative history give an indication that the Congress intended to reserve a reversionary interest. Moreover, the patent to the town of Jerome does not contain an express reversionary clause. The only indication that the conveyance was for cemetery and park purposes is the reference in the patent to the 1890 law under which it was issued. In addition, the patent conveys the property "forever." For these reasons it would appear this legislation is unnecessary. However, we have no objection to the release of the restriction by the Congress if it would remove any possible cloud on the title.

We note a technical error in H.R. 1593. The patent number on page 2, line 3 should be 497894.

This concludes my statement. I would be pleased to respond to any questions on this bill.

Senator WALLOP. Thank you, Mr. Parker. I have a statement on S. 1638 from Senator Goldwater.

[The prepared statement of Senator Goldwater follows:]

STATEMENT OF SENATOR BARRY GOLDWATER

SENATE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER, AND RESOURCE CONSERVATION

MARCH 4, 1986

Mr. Chairman, thank you for giving me this opportunity to testify on behalf of S. 1638. My proposal would direct the Secretary of the Interior to release on behalf of the United States certain restrictions in a previous conveyance of land to the Town of Jerome, Arizona.

In 1915, the Town of Jerome paid the United States Government fair market value for forty acres of land. The purchase, made under the authority of the Act of September 30, 1890, was for cemetery and park purposes. At that time, Jerome was a bustling mining town with a population around 15,000. After the closing of the mines in the 1950s, the population decreased markedly so that it now numbers around 500. Around ten acres of the land in question have been used and there is little likelihood that the remaining acreage will be needed for expansion of the cemetery.

Jerome would like to have the deed restrictions removed so that it can put the land to its best use and assist the community's economic development. The Act of September 30, 1890 contained no express reverter provision and the 1915 land conveyance patent also does not contain an express reversionary clause.

The Department of the Interior has no objection to this proposal as it is written because it does not release the mineral interests of the United States or the right-of-way for ditches and canals contained in the 1915 patent.

Mr. Chairman, this bill is very straight forward and uncomplicated. A similar version, H.R. 1593, was introduced in the House of Representatives and passed by that body last November. I hope you and your committee will be able to give this proposal favorable consideration. Thank you.

Senator **Wallop**. Next, if we could move to S. 2031.

Senator **Bumpers**. Mr. Chairman, would you indulge me just a moment?

Senator **Wallop**. Of course.

Senator **Bumpers**. I am going to have to run. I have another engagement I must get to. I wanted to make a comment to Mr. Parker on S. 1888. No. 1, do not narrowly construe the bill, because it is not intended to be narrowly construed. We will, in markup, take care of any concern you have about the narrowness of it.

You say here:

> Furthermore, in some parts of the country the dates specified in the bill for Cleanup Day, the first Saturday after Labor Day, may not be a practical time to concentrate such activities.

Where would it not be practical?

Mr. **Parker**. You could get into some of the northern areas, where there may be a weather problem, and also, because of certain local activities or other events that might conflict with that date if you get a rodeo season or you get some major activity in the community. Some flexibility in that might be useful in terms of letting them adjust those dates to meet their needs.

Senator **Bumpers**. Well, we will try to take care of any concern you might have just in the event somebody does think a day, maybe earlier, would be better. But the other points you make in here is that you think it ought to be not just a 1-day affair. That is fine, too. If you want to do it 2 or 3 days or a week or a month, or whatever you want to do, that is fine, too.

All we are trying to do is raise the awareness level and maybe save 50 to 100 million 1 day a year by letting the people of this country participate in stewardship over their land. That is all this bill is intended to do.

I do not want to get into these narrow or broad interpretations. We all understand the thrust of the bill, and as long as we abide by what we are trying to accomplish, I do not see how any of those little nitpicking things can make a difference.

Mr. **Parker**. We certainly endorse that, Senator.

Senator **Bumpers**. Thank you.

Thank you, Mr. Chairman.

Senator **Wallop**. Senator Johnston is on his way, so I think we will wait to take up S. 2031. If you will indulge me once again, and we will move to S. 2091.

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 2091

Mr. **Parker**. S. 2091 would amend section 205 of the Federal Land Policy and Management Act of 1976, to provide that lands acquired in exchange for revested Oregon & California Railroad grant lands, which we commonly refer to as O&C lands, or reconveyed Coos Bay Wagon Road Grant lands, shall be administered in accordance with the same provisions of law as govern the administration of the exchange revested or reconveyed lands.

We strongly support the enactment of S. 2091.

Under pre-FLPMA exchange of O&C lands, the acquired lands assumed the identity of O&C lands and were managed as O&C lands. Receipts from the acquired lands offset the receipts from the exchanged O&C lands.

However, since the lands that the Secretary acquires by exchange under section 206 of FLPMA become public lands in the O&C area, the provisions of FLPMA also control the disposition of revenue from the acquired lands.

This significantly affects the distribution of revenues to the counties in Oregon. The practical effect of disposing of O&C lands by exchange and receiving public lands in return is the virtual elimination of revenues to the counties from these lands.

Under these circumstances, exchange proposals involving O&C lands have not been well received by local governments and the public in Oregon, not because of resource management considerations, but only because of the effect that the exchange would have on revenue distribution in those particular counties.

S. 2091 would remove this impediment to exchanges involving O&C lands and would enable the Secretary of the Interior to continue to consolidate Federal land holdings and thereby provide for improved management and protection of O&C lands.

We believe that the legislative history shows that in repealing the Act of 1939, the Congress simply intended to consolidate into one statute the exchange authority of the Secretary and to make it more comprehensive, and that the resulting effect on the Secretary's authority with respect to the management of O&C and Coos Bay Wagon Road grant land as far as the receipts formula is concerned was inadvertent.

For that reason, S. 2091 would rectify this situation and would enable a viable exchange program to go forward. For that reason, we would strongly endorse the bill.

[The prepared statement of Mr. Parker follows:]

MAR 4 1986

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNTIED STATES SENATE, ON S. 2091, A BILL "TO AMEND THE PROVISIONS OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 RELATING TO THE ACQUISITION OF PUBLIC LANDS."

I appreciate the opportunity to appear before the Subcommittee today to discuss the Department of the Interior's views on S. 2091.

S. 2091 would amend section 205 of the Federal Land Policy and Management Act of 1976 (FLPMA) to provide that lands acquired in exchange for revested Oregon and California (O&C) Railroad Grant lands or reconveyed Coos Bay Wagon Road Grant (CBWR) lands shall be administered in accordance with the same provisions of law as govern the administration of the exchanged revested or reconveyed lands.

We strongly support the enactment of S. 2091.

The Act of July 31, 1939, authorized the Secretary of the Interior to exchange revested O&C and reconveyed Coos Bay Wagon Road grant lands for private, State, or county lands either within or contiguous to the former limits of such grants, when such exchanges would consolidate Federal land holdings. The 1939 Act required the Secretary to administer all lands and timber acquired by such exchange in accordance with the same provisions of law as the revested or reconveyed lands exchanged therefor. The 1939 Act was repealed in 1976 by section 705(a) of FLPMA, and the exchange authority in the 1939 Act was replaced by the exchange authority in section 206 of FLPMA. The Solicitor's Office of the Department of the Interior has concluded that lands acquired under section 206 of FLPMA in exchange for O&C and Coos Bay Wagon Road grant lands become public lands subject to FLPMA and, thus, are not subject to the management laws relating to O&C and Coos Bay Wagon Road lands. I will refer to all these lands as O&C lands because management of both types of lands is the same.

Under pre-FLPMA exchanges of O&C lands, the acquired lands assumed the identity of, and were managed as, O&C lands. Receipts from the acquired lands offset the receipts from the exchanged O&C lands. However, since lands that the Secretary acquires by exchange under section 206 of FLPMA become public lands, the provisions of FLPMA control the disposition of revenues from the acquired lands. This significantly affects the distribution of revenues to counties. The practical effect of disposing of O&C lands by exchange and receiving public lands in return is the virtual elimination of revenues to the counties from these lands.

Under these circumstances, exchange proposals involving O&C lands have not been well received by local governments and the public, not because of resource management considerations, but only because of the effect that such exchanges would have on revenue distribution. S. 2091 would remove this impediment to exchanges involving O&C lands and would enable the Secretary of the Interior to continue to consolidate Federal land holdings and thereby provide for improved management and protection of O&C lands.
We believe that the legislative history shows that, in repealing the 1939 Act, the Congress simply intended to consolidate in one statute the exchange authority of the Secretary of the Interior and to make it more comprehensive, and that the resulting effect on the Secretary's authority with respect to the management of Oregon and California and Coos Bay Wagon Road grant lands or the Oregon & California and Coos Bay Wagon Road grant lands formula was inadvertent. S. 2091 would rectify this situation. It would enable a viable exchange program to go forward.

This concludes my statement. I would be pleased to respond to questions on this bill.

Senator **Wallop**. Mr. MacCleery.

STATEMENT OF DOUGLAS W. MacCLEERY, DEPUTY ASSISTANT SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE, ON S. 2091

Mr. **MacCleery**. Mr. Chairman, we have a short prepared statement we would like to submit for the record. The Department of Agriculture's programs are not affected by this bill and we defer to the Department of the Interior for their position.

[The prepared statement of Mr. MacCleery follows:]

STATEMENT OF
DOUGLAS W. MACCLEERY, DEPUTY ASSISTANT SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, U.S. DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Public Lands, Reserved Water and Resource Conservation,
Committee on Energy and Natural Resources,
United States Senate

Concerning S. 2091

March 4, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to present the Department of Agriculture's views on S. 2091. This bill, which amends sections 205 and 206 of the Federal Land Policy and Management Act of 1976 dealing with land acquisition and exchange, provides that when non-Federal land is acquired by the Secretaries of the Interior or Agriculture in exchange for revested Oregon and California railroad grant lands or reconveyed Coos Bay Wagon Road grant lands, those lands would acquire the same status as the exchanged lands. Currently, those sections require that the non-Federal lands acquired by exchange would become public or national forest lands.

The Forest Service administers certain of these revested or reconveyed lands in western Oregon as national forest lands under the provisions of the Act of June 24, 1954. We must point out that section 1(a) of that Act specifically precludes the exchange of the revested or reconveyed lands administered by the Forest Service. Thus, it is our understanding that the provisions of S. 2091 would not apply to those national forest lands in western Oregon administered under the 1954 Act.

We therefore defer to the Department of the Interior's position on this bill.

That concludes my statement.

Senator **Wallop**. Thank you.
Mr. Parker, H.R. 1740.

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON H.R. 1740

Mr. **Parker**. H.R. 1740 would direct the Secretary of the Interior to release to Orange County, FL, the reversionary interest of the United States in a parcel of land of approximately 12,000 square feet that was conveyed to Orange County on February 11, 1972, by quit claim deed.

The interest to be released is the condition in the quit claim deed that provided that title to the land described in the deed shall revert to and revest in the United States if the land ceased to be used for recreation purposes or if the lands are deemed to be necessary for national defense.

I believe this was a radar site.

H.R. 1740 would require the Secretary of the Interior to release the reversionary interest of the United States only if Orange County agrees to use the proceeds from the sale of the land for park and recreation purposes, including the construction of buildings and facilities for the storage of park and recreation equipment and materials.

We have no objection to enactment of H.R. 1740. It is our understanding that this parcel of land was acquired by the Department of Defense. The tract was later conveyed by the Department of Defense to Orange County for recreational purposes. H.R. 1740 provides that the reversionary interest may be released only if the County agrees to use the proceeds from the sale of the land for park and recreation purposes. Releasing that portion of the reversionary interests of the United States that relates to recreation use of the land would not be contrary to the interests of the Government.

We understand that the Department of Defense has no objection to releasing that portion of the reverter provision that relates to national defense.

[The prepared statement of Mr. Parker follows:]

MAR 4 1986

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON H.R. 1740, AN ACT "TO DIRECT THE SECRETARY OF THE INTERIOR TO RELEASE A REVERSIONARY INTEREST IN CERTAIN LANDS IN ORANGE COUNTY, FLORIDA, WHICH WERE PREVIOUSLY CONVEYED TO ORANGE COUNTY, FLORIDA."

It is a pleasure to appear before the Subcommittee today to discuss the Department of the Interior's views on H.R. 1740.

H.R. 1740 would direct the Secretary of the Interior to release to Orange County, Florida, the reversionary interest of the United States in a parcel of land of approximately 12,000 square feet that was conveyed to Orange County on February 11, 1972, by quitclaim deed. The interest to be released is the condition in the quitclaim deed that provides that title to the lands described in the deed shall revert to, and revest in, the United States if the lands cease to be used for recreational purposes or if the lands are deemed to be necessary for national defense.

H.R. 1740 would require the Secretary of the Interior to release the reversionary interest of the United States only if Orange County agrees to use any proceeds from the sale of the lands for park and recreation purposes, including the construction of buildings and facilities for the storage of park and recreation equipment and materials.

We have no objection to the enactment of H.R. 1740.

It is our understanding that this parcel of land was acquired by the Department of Defense for use as a radar site. The tract of land was conveyed by the Department of Defense to Orange County in 1972 for use for recreational purposes. Because H.R. 1740 provides that the reversionary interest may be released only if the county agrees to use the proceeds from the sale of the land for park and recreation purposes, releasing that portion of the reversionary interest of the United States that relates to the recreational use of the land would not be contrary to the interests of the Department of the Interior. We understand that the Department of Defense has no objection to releasing that portion of the reverter provision that relates to national defense.

This concludes my statement. I would be pleased to respond to any questions on this bill.

Senator WALLOP. Thank you, Mr. Parker.

I have a statement for the record from Senator Hawkins on H.R. 1740 and one from Senator Hatfield on S. 2091 to be placed in the record.

[The statements of Senators Hawkins and Hatfield follow:]

Statement By Senator Paula Hawkins
on H.R. 1740
Before the Subcommittee on
Public Lands, Reserved Water and Resource Conservation
March 4, 1986

Mr. Chairman: I am glad to be here today to testify in support of H.R. 1740, a bill to release certain reversionary interests in land in Orange County, Florida. This bill passed the House on consent calender on November 4, 1985, and has been referred to this subcommittee.

Following World War II, the Federal Government erected a small radar site in a rural area of West Orange County on Apopka-Vineland Road. It is a small building of approximately 1200 square feet and a piece of land, 120 feet by 100 feet. In 1972, the Federal Government abandoned the site and deeded the property to Orange County, Florida. The deed contains a reversionary rights provision requiring that any disposition of the property by the County be in conjunction with its continued use as a public park and, if not used for such recreational purposes, the property is to be reverted to the Federal Government.

Due to the small size of the property, the County has since used the facility simply for storage purposes.

Last year, the County received a proposal from an adjacent land owner to purchase the site. The proceeds from the sale would be for an amount equal to the cost of constructing a new storage facility on County property in the same general area as that now used for public park and recreational purposes.

In order to carry through this proposal, a release of the Federal reverter rights to Orange County is necessary. Both the Departments of Interior and Defense have expressed support for this transaction, as has Orange County.

I urge the subcommittee to act quickly to favorably report H.R. 1740. Only when this bill becomes a law will Orange County be able to move forward to transfer the property in exchange for the construction of a storage facility to enhance its park and recreation program.

Thank you for the opportunity to testify in support of H.R 1740.

SENATOR MARK O. HATFIELD
STATEMENT BEFORE THE SUBCOMMITTEE ON
PUBLIC LANDS, RESERVED WATER AND
RESOURCE CONSERVATION
O & C/BLM LAND EXCHANGE, S. 2091
MARCH 4, 1986

Mr. Chairman,

I appreciate the opportunity to be heard today in support of legislation I introduced (S. 2091) which would amend the Federal Land Policy and Management Act of 1976 (FLPMA). This legislation would help facilitate land exchanges involving revested Oregon and California Railroad grant lands (O & C) and reconveyed Coos Bay Wagon Road grant lands that currently are managed by the Department of Interior's Bureau of Land Management (BLM).

Prior to the Federal Land Policy and Management Act of 1976, land exchanges involving O & C grant lands and private owners, counties, and the State of Oregon were encouraged by the Department of Interior, where desirable, as a means of bettering management practices on O & C lands. In these pre-1976 exchanges, the lands acquired by the BLM automatically assumed the same O & C management status as the lands released. The Federal Land Policy and Management Act of 1976, however, inadvertently stipulated that lands acquired in such exchanges are denied O & C management status, and instead simply become "public lands". This distinction is important due to the fact that the management objectives of O & C lands differ from those of public lands. The receipts-sharing formulas are different, and the funding mechanism differs as well.

Mr. Chairman, currently there are several Oregon land owners who are seeking to exchange their land for parcels of land bearing the O & C designation. Such exchanges clearly would be in the public's best interest and the counties involved are anxious to approve them. Unfortunately, current law acts as a disincentive for such exchanges to occur.

My legislation, S. 2091, would correct this provision of law that obviously is an oversight and was not the intent of the Congress in 1976. This bill would amend section 205 of FLPMA by authorizing the Secretary of Interior to manage lands received in exchange for O & C lands under the same laws as the lands which were released. This revision would ensure that there would be no disincentive to enter into exchange agreements involving O & C lands that are clearly in the best interest of the public.

Once again, thank you Mr. Chairman for this opportunity to express my support for this legislation. It is my hope that the subcommittee will give this bill its full consideration and report it favorably.

Senator WALLOP. Now, Mr. Buckley, Acting Assistant Commissioner, Office of Real Property, GSA, on S. 1911

STATEMENT OF JAMES J. BUCKLEY, ACTING ASSISTANT COMMISSIONER, OFFICE OF REAL PROPERTY, FEDERAL PROPERTY RESOURCES SERVICES, GENERAL SERVICES ADMINISTRATION

Mr. BUCKLEY. Mr. Chairman, I am pleased to have the opportunity to appear before you today to express the views of GSA on S. 1911, a bill to direct the Administrator of General Services to release on behalf of the United States, certain conditions and reservations contained in a conveyance of land to the State of Utah.

S. 1911 would direct the Administrator to release use restrictions described in the bill with respect to a parcel of land of approximately 150 acres, more or less, which is part of a larger tract of land conveyed to the State of Utah without monetary consideration for wildlife purposes, by deed dated July 26, 1950.

It is our understanding that the purpose of the bill is to enable the State to exchange the parcel with a private concern and that the land so acquired by the State of Utah will be used for wildlife conservation purposes.

We object to the legislation in its present form because it neither provides for monetary consideration to flow to the Government in return for the release of the use restrictions, nor requires that the release be conditioned upon an exchange between the State of Utah and the private concern.

Further, the legislation does not require that the property to be acquired by exchange must provide a wildlife conservation habitat equivalent to that to be reliquished, and that the new property is to be used for such purposes subject to reversionary and other rights which were retained by the Federal Government in the original conveyance.

Without the requirement for a monetary consideration or use restriction, S. 1911 could result in a windfall to the State or to the private concern.

We recognize that the purposes of this legislation cannot be accomplished under the provisions of existing legislation. We would not object to the legislation if it were revised to provide for appropriate monetary consideration to the Federal Government or, as an alternative, continuance of the restrictions on acquired property which would provide the wildlife conservation habitat deemed by the Secretary of the Interior to be equivalent to that release.

In that regard we would willingly work with the subcommittee to develop a textual revision which would both address our concerns and preserve the objectives of the bill.

This concludes my statement.

[The prepared statement of Mr. Buckley follows:]

STATEMENT OF JAMES J. BUCKLEY
ACTING ASSISTANT COMMISSIONER
OFFICE OF REAL PROPERTY
FEDERAL PROPERTY RESOURCES SERVICE
GENERAL SERVICES ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCES CONSERVATION
OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
IN WASHINGTON, D.C.
MARCH 4, 1986

Mr. Chairman and Members of the Subcommittee:

I am James J. Buckley, Acting Assistant Commissioner of the Office of Real Property, Federal Property Resources Service, General Services Administration (GSA). I am pleased to have the opportunity to appear before you today to express the views of GSA on S. 1911, a bill "To direct the Administrator of General Services to release, on behalf of the United States, certain conditions and reservations contained in a conveyance of land to the State of Utah."

S. 1911 would direct the Administrator of General Services to release use restrictions, described therein, with respect to a parcel of land of approximately 150 acres, more or less, which is part of a larger tract of land conveyed to the State of Utah without monetary consideration for wildlife purposes by deed dated July 26, 1950. It is our understanding that the purpose of the bill is to enable the State of Utah to exchange the parcel with a private concern and that the land so acquired by the State of Utah will be used for wildlife conservation purposes.

We object to the legislation in its present form because it neither provides for monetary consideration to flow to the Government in return for the release of the use restrictions nor requires that the release be conditioned upon an exchange between the State of Utah and the private concern. Further, the legislation does not require that the property to be acquired by exchange must provide a wildlife conservation habitat equivalent to that to be relinquished and that the new property is to be used for such purposes subject to reversionary and other rights which were retained by the Federal Government in the original conveyance. Without the requirement for monetary consideration or use restrictions, S. 1911 could result in a "windfall" profit to the State of Utah and/or the private concern.

We recognize that the purposes of this legislation cannot be accomplished under the provisions of existing legislation. We would not object to the legislation if it were revised to provide for appropriate monetary consideration to the Federal Government or, as an alternative, continuance of the restrictions on acquired property which would provide a wildlife conservation habitat determined by the Secretary of the Interior to be equivalent to that relinquished. In that regard, we would willingly work with the Subcommittee to develop a textual revision which would both address our concerns and preserve the objectives of the bill.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions you and the other members of the Subcommittee would like to ask.

Senator **Wallop**. Thank you, Mr. Buckley.

We will look to your recommendations on that. That would conclude your testimony here, and so you may depart if you wish.

Also on S. 1911, I have a statement by Senator Garn, and in a moment we will hear testimony by Mr. Wolkins, from Salt Lake City.

[The prepared statement of Senator Garn follows:]

Statement by Senator Jake Garn
S. 1911
March 4, 1986

Mr. Chairman, I am pleased to join with Senator Hatch to offer my support for S. 1911, a bill that will provide for the protection of at least 3,519 acres of wetland habitat in northern Utah while making possible the orderly development of a 150 acre parcel of commercial property in the greater Salt Lake City area.

This land exchange has the united support of the Utah Congressional delegation, Governor Norm Bangerter, as well as conservationists within the state of Utah.

The need for this legislation stems from the existence of reversionary clauses and the right to surface entry for mineral rights attached to a 150 acre tract of land that was deeded to the State of Utah by the federal government in 1950. The reversionary clauses prohibit the State or private entities from developing the land for purposes other than for national defense or fish and wildlife enhancement reasons. This prohibition is impractical today because the 150 acre tract is surrounded by commercial buildings, and other structures commonly found in large metropolitan areas.

The Upland Industries Corporation is prepared to transfer to the State of Utah in excess of 3,519 acres of prime wetland habitat, which it now owns, in exchange for acquisition of the 150 acre tract. But, before this can happen, the Congress must remove the reversionary clauses from the small tract of land.

Mr. Chairman, I believe this proposal is a sound one. It will allow the State Division of Wildlife Resources to provide enhanced protection for ducks, geese, and other forms of wildlife, while allowing responsible commercial development within the Salt Lake metropolitan area. I hope the committee will act promptly to approve this legislation. Thank You.

Senator **WALLOP**. What I intend to do now is to turn to S. 1617 and begin with Mr. Parker.

And I have a statement which I will put in the record.

[The prepared statement of Senator Wallop follows:]

STATEMENT OF MALCOLM WALLOP
A U.S. SENATOR FROM THE STATE OF WYOMING
BEFORE THE SUBCOMMITTEE ON
PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION
ON S. 1617

S. 1617 WILL CLARIFY THE STATUS OF LANDS WHICH ARE EITHER IN THE PUBLIC DOMAIN OR IN THE STATE OWNERSHIP, AND REQUIRES THE SECRETARY OF THE INTERIOR TO REPORT ON NEGOTIATIONS FOR SETTLEMENT OF DISPUTES CONCERNING LANDS CLAIMED BY THE STATES AND ADMINISTERED BY THE DEPARTMENT OF THE INTERIOR.

THIS LEGISLATION WILL PAVE THE WAY TOWARD RESOLVING THE LONG-STANDING CLOUD OVER FEDERALLY CLAIMED LANDS THAT LIE PRIMARILY WITHIN THE WESTERN PUBLIC LAND STATES BY PERMITTING JUDICIAL RESOLUTION OF THEIR STATUS WITHOUT RESPECT TO THE TIME THE STATES FILED CLAIMS.

UPON ADMISSION TO THE UNION, ALL WESTERN STATES WERE GRANTED SUBSTANTIAL AMOUNTS OF LAND TO BE HELD IN TRUST AND ADMINISTERED FOR THE BENEFIT OF THE COMMON SCHOOLS AND OTHER PUBLIC INSTITUTIONS. EACH GRANT OF LANDS MADE TO THE WESTERN STATES BY THE U.S. GOVERNMENT EXPRESSLY REQUIRED THAT THE STATES WERE TO SERVE AS TRUSTEES OF THE LANDS SO GRANTED FOR THE EXCLUSIVE BENEFIT OF THOSE BENEFICIARY INSTITUTIONS. MANY STATE SUPREME COURTS AND THE U.S. SUPREME COURT, IN REVIEWING THE VARIOUS ACTS OF ADMISSION, HAVE CONSISTENTLY HELD THAT STATES HAVE A SACRED DUTY TO PROPERLY MANAGE AND PROTECT THE LANDS GRANTED TO THEM BY THE U.S. GOVERNMENT.

WHILE CONGRESS AND THE COURTS HAVE PLACED THIS OBLIGATION ON INDIVIDUAL STATES, A CURRENT PROVISION OF THE FEDERAL QUIET TITLE ACT ELIMINATES, IN CERTAIN LIMITED SITUATIONS, THE ABILITY OF THE STATES TO FULFILL THEIR TRUST OBLIGATIONS.

IN EFFECT, THE CURRENT FEDERAL QUIET TITLE ACT OF 1972, AS A RESULT OF THE RECENT RULING BY THE U.S. SUPREME COURT IN BLOCK VERSUS NORTH DAKOTA, REQUIRES STATES, AS WELL AS PRIVATE PARTIES, TO FILE LAWSUITS WITHIN 12 YEARS LIMITATION OF THE TIME THEY KNEW OR SHOULD HAVE KNOWN THERE WAS A FEDERAL CLAIM TO THE LAND IN QUESTION. IN SOME CASES THIS TIME HAS BEEN INTERPRETED TO BE THE DATE OF A STATE'S ADMISSION TO THE UNION. WHILE IT MAY BE REASONABLE TO APPLY THIS RESTRICTION TO PRIVATE PARTIES TO PREVENT A FLOOD OF LITIGATION ON OLD CLAIMS, IT RESULTS IN BARRING THE STATES FROM FULFILLING THEIR STRINGENT OBLIGATION WHICH CONGRESS ITSELF IMPOSED UPON THEM WHEN THEY WERE ADMITTED TO THE UNION. CERTAINLY, IT IS ANOMALOUS FOR CONGRESS TO REQUIRE STATES TO SERVE AS TRUSTEES OF STATE LAND AND AT THE SAME TIME ESTABLISH A QUIET TITLE BARRIER WHICH PREVENTS THE STATES FROM FULFILLING THEIR CONGRESSIONALLY MANDATED TRUST RESPONSIBILITIES.

FOR EXAMPLE, AS THE TRUSTEE OF OVER 4 MILLION ACRES OF STATE-OWNED LANDS, WYOMING IS CONVINCED THAT IT IS IMPOSSIBLE TO ADEQUATELY ADMINISTER AND PROTECT ITS VITAL INTERESTS AND OBLIGATIONS UNDER THE CURRENT LANGUAGE OF THE FEDERAL QUIET TITLE ACT. UNDER EXISTING COURT INTERPRETATIONS WYOMING WOULD HAVE TO REVIEW OVER 3 MILLION DIVERSE FEDERAL ACTIONS IN ORDER TO INSURE THAT STATE TRUST LANDS WERE NOT BEING CLAIMED BY THE FEDERAL GOVERNMENT.

IN ADDITION, WYOMING WOULD HAVE TO CONTINUALLY MONITOR ALL ONGOING FEDERAL ACTIONS INCLUDING ALL SURFACE AND MINERAL LEASING, GRANTS OF RIGHTS-OF-WAY, PATENT APPLICATIONS, LAND EXCHANGES, WITHDRAWALS, SPECIAL USE PERMITS, TIMBER SALES, AND GOVERNMENTAL RESURVEYS, TO NAME A FEW. GIVEN WYOMING'S CHECKERBOARD PATTERN OF STATE LAND OWNERSHIP, THIS IS A PARTICULARLY DIFFICULT TASK. PUBLIC LANDS AND THE PUBLIC'S INTEREST THEREIN DESERVE BETTER MANAGEMENT THAN THAT, BOTH IN THE INTEREST OF EFFICIENCY AND EQUITY.

THIS LEGISLATION WOULD END THIS CONFLICT BY AMENDING THE QUIET TITLE ACT OF 1972 TO EXEMPT SOVEREIGN STATES FROM THE 12-YEAR STATUTE OF LIMITATIONS FOR FILING SUIT AGAINST THE FEDERAL GOVERNMENT OVER DISPUTED LAND CLAIMS. IT WOULD ALSO REQUIRE THE DIRECT INVOLVEMENT OF THE DEPARTMENT OF THE INTERIOR IN THE SETTLEMENT OF STATE-FEDERAL PUBLIC LAND TITLE DISPUTES, WHICH MIGHT NOT BE CONCLUDED WITHOUT THE OPTION OF BEING ABLE TO RELY ON ULTIMATE JUDICIAL RESOLUTION. CLEAR TITLE TO REAL PROPERTY IS ESSENTIAL TO ANY STATE EFFORT TO PROPERLY MANAGE AND PROTECT STATE-OWNED TRUST LANDS. LIKEWISE, THE RESOLUTION OF THESE TITLE DISPUTES WOULD ALSO BE NECESSARY FOR MANAGEMENT AND PROTECTION OF FEDERAL LANDS SINCE STATE CLAIMS REMAIN ALIVE EVEN IF THERE IS NO CONSENT TO SUE. THE INABILITY TO JUDICIALLY RESOLVE STATE-FEDERAL TITLE DISPUTES SIMPLY MAKES EFFECTIVE LAND AND RESOURCE MANAGEMENT EVEN MORE COMPLEX AND DIFFICULT THAN IT ALREADY IS.

AS A FINAL NOTE, I WOULD LIKE TO ADD THAT A LARGE AND GEOGRAPHICALLY DIVERSE GROUP OF STATES FILED AMICUS CURIAE BRIEFS IN THE RELEVANT BLOCK VERSUS NORTH DAKOTA CASE: ALABAMA, ALASKA, ARIZONA, ARKANSAS, CALIFORNIA, DELAWARE, FLORIDA, GEORGIA, HAWAII, IDAHO, ILLINOIS, IOWA, LOUISIANA, MICHIGAN, MINNESOTA, MONTANA, NEVADA, NEW JERSEY, NEW YORK, OKLAHOMA, OREGON, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, VERMONT, WASHINGTON, AND WYOMING.

THE WIDESPREAD SUPPORT FOR THIS LEGISLATION IS INDICATED BY THE RESOLUTIONS OF THE FOLLOWING ORGANIZATIONS: NATIONAL GOVERNORS ASSOCIATION, NATIONAL ASSOCIATION OF ATTORNEYS GENERAL, WESTERN ATTORNEYS GENERAL, NATIONAL CONFERENCE OF STATE LEGISLATURES, WESTERN STATES LAND COMMISSIONERS ASSOCIATION, AND EASTERN LAND AND RESOURCES COUNCIL.

Senator **WALLOP**. Mr. Parker, if you would begin on S. 1617.

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 1617

Mr. **PARKER**. The stated purpose of S. 1617 is "more effective management of public lands by providing for speedy resolution of intergovernmental title disputes involving lands to which the United States asserts title which interfere with effective administration and disposition of the lands."

We feel that enactment of the proposed legislation would have exactly the opposite effect.

S. 1617 would require the Secretary of the Interior to report annually to the Congress as to the status of negotiations for the settlement of any claims by States to lands administered by the Department.

S. 1617 would amend section (f) of section 2409a of title 28, United States Code, to exempt States from the 12-year statute of limitations in quiet title action brought to adjudicate disputed title to lands in which the United States claims an interest, other than a security interest or water rights.

This adminstration has consistently placed special emphasis on trying to understand and resolve State and local problems related to Federal land management issues, and we are sympathetic to the needs of State and local governments.

However, we find it necessary in this case to oppose the enactment of S. 1617 which would exempt States from the 12-year statute of limitations for bringing civil action against the United States to adjudicate the question of title to lands in which the United States asserts ownership.

The purpose of the statute of limitations is to provide a point certain in time when all adverse action will cease. To grant a State authority to initiate litigation in perpetuity appears to us to be unrealistic. Eliminating the 12-year limitation might encourage the States to procrastinate the prosecution of quiet title actions against the United States and that would be detrimental to Federal resource management programs.

As the United States proceeds with management and development of Federal lands through leases, construction of facilities, disposition and other authorized actions, there is potential for loss of investments of public and private funds if the States are allowed to bring quiet title action at any time it might suit them to do so.

My prepared statement contains many examples of the types of problems that we might encounter. I would like to cite only one of these to illustrate the kind of problem that might be involved.

In Nevada, Ruby Lake in Elko County is under the jurisdiction of the Fish and Wildlife Service. That agency is charged with conservation of nationally significant fish and wildlife resources. This mandate includes the conservation of migratory bird resources protected by several international treaties and the protection and recovery of species which are endangered or threatened, pursuant to the Endangered Species Act.

In carrying out these responsibilities, the Fish and Wildlife Service has acquired much wetland habitat for inclusion in the national wildlife system. Some of the habitat acquired includes former lake beds that some have contended were navigable at the time States were admitted to the Union and, as such, they would be the property of States if that contention held.

As water levels recede over time and lake beds become vegetated and nonnavigable, adjoining landowners take possession of such reliction lands and assert private title.

The United States has acquired a number of such properties from private owners. Some of these former lake beds have been developed and improved by damming or diking to create impoundments.

The 12-year statute of limitations is a critical factor for the United States to defend title and to continue effective administration of such lands as part of the refuge system.

A case in point is the 1984 suit entitled *Nevada* v. *the United States,* involving the Ruby Lake National Wildlife Refuge. The land in the lake bed was acquired by the United States from private landowners in 1938 and 1939 and was later impounded by the Fish and Wildlife Service to develop waterfowl habitat.

The refuge consists of 37,362 acres, of which almost 24,000 acres are former lake bed lands. The refuge support the densest nesting population of canvasback ducks in the United States. It is also a major red duck production area. In all, 15 different species of waterfowl nest on the refuge. The refuge also provides significant boating and sports fishery resource for local residents.

As a result of the dispute over the regulation of boating by the Fish and Wildlife Service, the State claimed title to the bed of Ruby Lake by virtue of its ownership of navigable lakes and filed its court case in 1978. Had the State prevailed and received title to the land bed of Ruby Lake, the United States would have been forced to repurchase the property or, in the alternative, abandon the refuge.

The Ninth Circuit Court of Appeals in its affirmation of the Nevada District Court held that the State claim to the bed of Ruby Lake was barred by the 12-year statute of limitation.

We are concerned that if S. 1617 were enacted, any number of cases of this type might be initiated.

We believe that harmonious, effective, and efficient long-term management of Federal resources requires administrative finality where, beyond a time certain, the ownership of resources is secure.

Eliminating the 12-year statute of limitations for the States would foreclose that ownership security and disrupt management and development of Federal interest. Most quiet title actions require research of records for accurate determination of ownership. Defense of surveys is obviously more difficult for older ones than it is for more recent ones.

Time dims the facts, and with no time limitation the courts could become overburdened with cases for which no good historical records might exist.

If the 12-year statute of limitation is removed, the cost to the Federal Government in both time and resources could be staggering. The cost to litigate such cases would be enormous from the standpoint of researching old and obscure records and the need to do land surveys in an effort to estimate conditions that may have existed many years ago.

We also can see little value in the requirement for an annual report. If the bill passes, such information could easily be included in the report that we already submit annually to the Congress.

That concludes my statement.

[The prepared statement of Mr. Parker follows:]

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 1617, A BILL "TO PROVIDE FOR MORE EFFECTIVE MANAGEMENT OF LANDS OF THE UNITED STATES WHICH ARE SUBJECT TO CONFLICTING CLAIMS OR DISPUTES, AND TO REQUIRE THE SECRETARY OF THE INTERIOR TO REPORT ANNUALLY THEREON."

I appreciate the opportunity to appear before the Subcommittee today to discuss the Department of the Interior's views on S. 1617.

The stated purpose of S. 1617 is more effective management of public lands by providing for speedy resolution of intergovernmental title disputes involving lands to which the United States asserts title, which interfere with effective administration or disposition of public lands.

S. 1617 would require the Secretary of the Interior to report annually to Congress as to the status of negotiations for the settlement of any claims by States to lands administered by the Department of the Interior.

S. 1617 would amend subsection (f) of section 2409a of title 28 United States Code, to exempt States from the 12-year statute of limitations in quiet title actions brought to adjudicate disputed title to lands in which the United States claims an interest, other than a security interest or water rights.

We oppose the enactment of S. 1617.

We know of no reason to allow special treatment for States by exempting them from the 12-year statute of limitations for bringing civil actions against the United States to adjudicate the question of title to lands in which the United States asserts ownership. The purpose of the statute of limitations is to provide a point certain in time when all adverse action will cease. To grant a State the authority to initiate litigation in perpetuity is not realistic. Eliminating the 12-year limitation would encourage the States to procrastinate in the prosecution of quiet title actions against the United States. That could be detrimental to Federal resource management programs. As the United States proceeds with management and development of Federal lands through leases, construction of facilities and other authorized actions, there is potential for loss of investment of public funds if the States can bring quiet title actions at any time it suits them to do so.

The issue of navigability of rivers and lakes is one of the principal concerns of the Bureau of Land Management (BLM), the Fish and Wildlife Service and other land management agencies. Upon entering the Union, States were granted ownership of navigable rivers and lakes. What constitutes a navigable river is a source of controversy. The Quiet Title Act waived the sovereign immunity of the United States and provides the means by which adverse claimants may challenge the title of the United States to real property.

If the States were exempted from the statute of limitations, they could raise questions as to the navigability of rivers at any time and rivers presently managed by the Bureau of Land Management or other land management agencies because they are deemed to be non-navigable could become the property of States, thereby confusing river management responsibilities. Thus, the 12-year statute of limitations is critical to the United States if it is to defend its title and continue effective management of the public lands.

We can foresee impacts to the locatable minerals program if States are exempt. Placer mining, if occurring on a stream that has not been determined to be navigable, could be challenged at any time. With regard to salable minerals, the majority of sand and gravel mining deposits are riverlain. Exemption of States from the statute of limitations could make it more difficult to plan a sand and gravel disposal program.

I will give you just a sampling of the many potential problems enactment of S. 1619 might generate.

In Alaska, the issue of navigability and submerged land ownership has been marked by innovative arguments by the State and several Federal Court actions. These arguments and the litigation have raised doubts as to the ownership of submerged land. Alaska has argued that ice and the use of ice found in Alaska water columns should be a factor in navigability determinations.

The State has unsuccessfully argued that float plane use constitutes a factor for navigability determinations. These varied and often unique arguments have left the issue of water body ownership in the hands of the courts. Planning and development of minerals and lands has been restricted on many lakes and rivers pending either clear criteria for determination of navigability from the courts or judicial actions to quiet title. Alaska has challenged the right of the United States to lease land under the water bodies in the National Petroleum Reserve Alaska (NPR-A). The position of the United States is that the NPR-A was withdrawn before statehood and, hence, the water and underlying land is in Federal jurisdiction. An exemption of the States from the statute of limitations could continue these types of problems in perpetuity.

In Arizona, we have reason to believe the State could challenge the ownership of the Gila, Salt and Verde Rivers. Each has leasable or salable minerals and mineral leases and permits have been issued on each. Seven miles of the Gila River are located within a Wilderness Study Area under BLM jurisdiction. If the State decides to challenge the title to the three rivers and is successful, it might set its sights on other rivers and lakes formed by impoundment for irrigation purposes. In the absence of a statute of limitations, the number of title challenges which could be inititated is not calculable. There might be one on each river, or there might be hundreds, depending on how each case is structured and its individual value as precedent in future cases. Riparian cadastral surveys and the litigation concerning such cases are usually extremely complex, involve high-valued lands and require a strong and decisive Federal defense. To be able to deal with the projected lawsuits being filed and expected to be filed, it is important to retain the 12-year statute of limitations. This would keep only "current" cases before the courts, and prevent claims from continuously reappearing on the same body of water.

In Colorado, BLM is periodically reminded that the State did not receive school sections 16 and 36 in much of western Colorado which were in the Ute Indian Reservation. Many of these sections are in lands rich in oil and gas, coal, or oil shale. Even though the State selected and received title to other lands as indemnity for the sections lost, we believe there is a lingering desire on the part of the State toward some type of action that would allow it to obtain title to lands within the mineral areas. The 12-year statute of limitations for quiet title actions acts as a deterrent to the State in pursuing this avenue of relief.

If title to lands on the Colorado River were quieted to the State, the Federal Government would lose its share of the rentals and royalties generated by the leases and permits. In addition, several sites along the river have been leased for gravel. Revenues to the Federal Government generated by these gravel sales would be lost if title were quieted to the State. The Colorado

River from the Loma Linda launch site to the Colorado/Utah State line, and the Dolores River have been proposed for designation or further study as Wild and Scenic Rivers. There are other rivers under Forest Service jurisdiction that are either designated Wild and Scenic Rivers or are proposed Wild and Scenic River Study Areas. The Gunnison, Yampa, Dolores, and Colorado Rivers all flow through or are adjacent to Wilderness Study Areas.

In Montana, North Dakota and South Dakota, almost every river and lake in the three States have potential for leasable minerals. Nearly all sand and gravel deposits are considered to be common variety minerals and, therefore, are salable minerals. One of the best sources of sand and gravel is in existing or old geologic stream channel beds. Sand and gravel deposits may occur in all river beds within the three-state area.

If navigability becomes an issue, ownership of the sand and gravel and other minerals would come into question. In addition, river management could become a problem in areas like the Madison River, located in the Bear Trap Canyon Wilderness Area; and the Axolotl Lakes and Blue Lake, located in Wilderness Study Areas.

In Nevada, Ruby Lake in Elko County is under the jurisdiction of the Fish and Wildlife Service. That agency is charged with conservation of nationally significant fish and wildlife resources. This mandate includes the conservation of migratory bird resources protected by several international treaties and the protection and recovery of species listed as endangered or threatened pursuant to the Endangered Species Act. In carrying out these responsibilities, the Fish and Wildlife Service has acquired much wetland habitat for inclusion in the National Wildlife Refuge System. Some of the habitat acquired includes former lakebeds that may have been navigable at the time States were admitted to the Union and, as such, may have been property of States. As water levels recede over time and lakebeds become vegetated and non-navigable, adjoining landowners take possession of such reliction lands and assert private titles. The United States has acquired a number of such properties from the private owners. Some of these former lakebeds have been developed and improved by damming or diking to create impoundments. The 12-year statute of limitations is a critical factor for the United States to defend title and to continue effective administration of such lands as part of the refuge system.

A case in point is Nevada v. United States, 547 F. Supp. 776 (D. Nev. 1982), aff'd F.2d (9th Cir., Apr. 20, 1984), involving the Ruby Lake National Wildlife Refuge, Nevada. The land in the lakebed was acquired by the United States from private landowners in 1938 and 1939 and was later impounded by the Fish and Wildlife Service to develop waterfowl habitat. The Ruby Lake National Wildlife Refuge consists of 37,362 acres of which almost 24,000 acres are former lakebed lands. The Ruby Lake refuge supports the densest nesting population of canvasback ducks in the United States. It is also a major redhead duck production area. In all, 15 different species of waterfowl nest on the refuge. The refuge also provides a significant boating and sport fishery resource to local residents.

As a result of a dispute over regulation of boating by the Fish and Wildlife Service, the State claimed title to the bed of Ruby Lake by virtue of its ownership of navigable lakes and filed its court case in 1978. Had the State prevailed and received title to the bed of Ruby Lake, the United States would have been forced to repurchase the property or, in the alternative, abandon the refuge.

The Ninth Circuit Court of Appeals, in its affirmation of the Nevada District Court, held that the State claim to the bed of Ruby Lake was barred by the 12-year statute of limitation. We are concerned that if enacted, the bill might be construed to be retroactive, thus reopening the case at Ruby Lake.

Portions of the Humboldt River cross lands administered by BLM and the Bureau of Reclamation. This area has considerable potential for development of leasable and salable minerals, primarily geothermal resources. Navigability claims would put ownership of these resources in question.

If navigability becomes an issue in New Mexico and Oklahoma, ownership problems would result in several areas:

- portions of the East Canadian and Red Rivers in Oklahoma which have been leased for development of Federal minerals;

- portions of the Rio Grande, Chama, San Juan, and the Pecos Rivers in New Mexico, where the United States has jurisdiction and there is potential value for leasable and salable minerals;

- portions of the designated Rio Grande Wild and Scenic River bed considered under BLM jurisdiction;

- and the Chama River, located in the Gila Lower Box Wilderness Study Area.

In Oregon, the Owyhee River has been designated a Wild and Scenic River and portions flow through a Wilderness Study Area; the John Day River is a Wild and Scenic Study River which flows through a Wilderness Study Area; and the Rogue River has been designated a Wild and Scenic River. Management of these areas would be difficult if the State claims ownership and litigation were to be initiated many years hence.

In Utah, questions regarding navigability could affect:

- Sever Lake, where there are Federal oil and gas leases, potash prospecting permits and mining claims;

- the Dolores River where from confluence with the Colorado River to the Utah/Colorado State line there is potential value for leasable and salable minerals and which, in addition, is within a Wild and Scenic River Study Area;

o the Colorado River where from confluence with the Dolores River to the Utah/Colorado State line there is potential value for leasable or salable minerals and which is within a Wild and Scenic River Study Area;

o 17 miles of the Colorado River in the Westwater Canyon which is within the Westwater Canyon Wilderness Study Area;

o and Fish Lake in the Fish Lake National Forest which has potential for leasable and salable minerals. In addition, the State of the Utah has issued a few State mineral leases in the Colorado River bed where BLM claims jurisdiction.

There are a number of refuges administered by the Fish and Wildlife Service where former lakes or former navigable water areas have been acquired and included in National Wildlife Refuges. The Fish and Wildlife Service has also acquired a significant amount of coastal wetland habitat for inclusion in the refuge system, another class of refuge lands that are likely to be affected by enactment of this bill. It is not possible without considerable research to identify all such areas, but the following refuges could be impacted:

Big Lake NWR, Arkansas
Wapanocca NWR, Arkansas
Clear Lake NWR, California
Lower Klamath NWR, California, Oregon

Bear Lake NWR, Idaho

Grays Lake NWR, Idaho

St. Marks NWR, Florida

Sabine NWR, Louisiana

Agassiz Agassiz NWR, Minnesota

Yazoo NWR, Mississippi

Malheur NWR, Oregon

In facilitating State challenge to areas such as these, S. 1617 could affect thousands of acres in the refuge system and disrupt our efforts to conserve nationally significant wetlands. We believe that the loss of wetlands is one of the most serious environmental problems facing the Nation today. Less than half of the wetland acreage that once existed in the lower 48 States still remains, and we are continuing to lose wetlands at the pace of nearly one-half million acres every year, with far-reaching implications for the varied natural resource benefits that wetlands provide.

Harmonious, effective and efficient long-term management of Federal resources requires administrative finality where, beyond a time certain, the ownership of the resource is secure. Eliminating the 12-year statute of limitations for the States would foreclose that ownership security and disrupt management and development of Federal interests.

Most quiet title actions require research of records for accurate determination of ownership. Defense of surveys is obviously more difficult for older ones than the more recent ones. Time dims the facts. With no time limitation, our courts could become overburdened with cases for which no good historical record exists.

If the 12-year statute of limitation is removed, the cost to the Federal government could be staggering. The costs to litigate such cases could be enormous from the standpoint of researching old and obscure records and the need to do land surveys in an effort to estimate conditions that may have existed many years ago.

We can see little value in the requirement for an annual report. Simply reporting to Congress on the status of title disputes will not achieve the stated purpose of the bill - to obtain more effective management of the public lands. Nor would it achieve the purpose of speedy resolution of intergovernmental title disputes involving lands to which the United States asserts title. Eliminating the statute of limitations with regard to States could cause the opposite result.

This concludes my statement. I will be pleased to respond to any questions you may have.

Senator WALLOP. Mr. Parker, thank you, I guess.

I must say the major disappointment that I have is that the gist and thrust of your testimony seems to be that the States exist for the convenience of the Federal Government and there is not the slightest bit of anxiety on your part as to what their obligations are and what it does to their management of their trusteeship.

It is all from a singular perspective. I hope before we get done with here, to charge you all to go back, together, and devise something that will work, because I do not find it in this statement at all. I do not find an attitude that is even remotely helpful. It is not very becoming for the land management agency of a Western State President to present such a singularly narrow perspective, without any sense of cooperation.

I hope that before we are done, we can develop that. I am not saying that the bill is perfect—I did not suggest that when I introduced it—nor are my cosponsors. But I must say that it represents a reaction to a problem that has been brought to our attention by a number of governors, State associations and State attorneys general. So something out there is troubling them as well.

Please, I ask you to go back to the Department with a message that there is a problem that requires at least two people traveling on that street.

I really do urge that, because otherwise all the horrors you have cited as a complication for the Federal Government will be visited upon the States, and they will have to have an action a day just to keep things going.

They have no way of knowing. It is generally assumed by our people in Wyoming that we would have to establish an arm of State government just to monitor the activities of the Federal Government on State lands which would include surface mineral leasing, grants of rights-of-way and patent applications, land exchanges, withdrawals, special use permits, timber sales, governmental resurveys, and so on and so forth.

So, while it may be no longer a problem for you with the 12-year statute, it suddenly becomes an immense problem for us. I do not think that is the way the Government was suppose to be.

Mr. PARKER. We certainly appreciate and understand that problem, Senator, and we think we have been trying to work to resolve the issues involved here. We just do not want to see one problem replaced with another major bureaucratic problem—one that creates an unmanageable situation that we have to undo.

Senator WALLOP. Would you listen carefully and quietly as Mr. MacCleery gives his testimony on this? I think you will have a hint of what I am hoping will be the answer for the administration.

Mr. MacCleery.

STATEMENT OF DOUGLAS W. MacCLEERY, DEPUTY ASSISTANT SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE, ON S. 1617

Mr. MACCLEERY. Thank you, Mr. Chairman.

The Department of Agriculture also has a number of concerns over the implications of S. 1617 and recommends that it not be enacted in its present form.

We defer to the Department of Justice, Mr. Henry Habicht, who will discuss the legal implications of the issues to which the bill is addressed and how the bill would impact the Federal Government.

I would like to say, though, that we be more than happy to work with the committee and with the States to try to develop a mutually beneficial solution to this problem.

With that, I would just submit my statement to the record and conclude.

[The prepared statement of Mr. MacCleery follows:]

STATEMENT OF
DOUGLAS W. MACCLEERY, DEPUTY ASSISTANT SECRETARY,
NATURAL RESOURCES AND ENVIRONMENT,
U.S. DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Public Lands, Reserved Water and Resource Conservation
Committee on Energy and Natural Resources
United States Senate

Concerning S. 1617

March 4, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to appear here today to present the Department of Agriculture's views on S. 1617. This bill would amend the Quiet Title Act to exempt the States from the 12-year statute of limitation applicable to quiet title actions against the United States. We recommend that S. 1617 not be enacted. We defer to the Department of Justice witness for the legal implications of the issue to which the bill is addressed and how the bill would impact the Federal Government.

The Quiet Title Act was intended by Congress to provide a limited waiver of sovereign immunity in quiet title actions. The 12-year statute of limitations was included to prevent assertion of stale claims. A May 1983 Supreme Court decision, Block v. North Dakota (461 U.S. 273), verified that the Act provides the exclusive authority under which States may judicially challenge the title of the United States to real property and that the statute of limitation is applicable to a State. The bill seeks to overcome the Supreme Court decision and to provide for more speedy resolution or intergovernmental title disputes for lands to which the U.S. asserts title.

In earlier testimony on similar legislation, the Department of Justice concluded that in Federal-State relationships ordinary quiet title actions over real property are not the principal problem posed by the 12-year statute of limitations. This Department's experience substantiates the Department of Justice conclusion. We have had few, if any, real property title disputes with the States since enactment of the Quiet Title Act.

However, we have had problems with the States because of doubts about the navigability or non-navigability of certain bodies of water. There is an ongoing effort between the Forest Service and certain States to establish ownership of certain submerged lands which are a part of the National Forest System. Since the Supreme Court decision that the Quiet Title Act provides the exclusive remedy by which the States can challenge title of the United States, other judicial remedies for lawsuits against the United States are effectively barred. Thus, the Act has had the effect of narrowing opportunity for resolving title to submerged lands. This is partly because of the contention that State claims usually occurred at a time a particular State was admitted to the Union, which in virtually all cases is more than 12 years prior to enactment of the Quiet Title Act.

We are hopeful that the discussions between the Federal Government and several Western State governments, initiated by the introduction of this bill and which seek an administrative rather than legislative solution to the problem of quiet title actions, will be successful and that the solution will include resolution of the submerged lands issue. We have been consulted by the Department of Justice on these discussions and have made our views known. In any event, we believe that negotiated resolution of this issue is to be preferred over the broad waiver proposed by S. 1617 and thus urge that the bill not be enacted.

That concludes my statement. I would be happy to answer the Subcommittee's questions.

Senator Wallop. I appreciate it.

Let me just read that part of your statement to which I was referring.

"We are hopeful that the discussions between the Federal Government and several Western State governments, initiated by the introduction of this bill and which seek an administrative rather than legislative solution to the problem of quiet title actions, will be successful and that the solution will include resolution of the submerged lands issue. We have been consulted by the Department of Justice on these discussions and have made our views known. In any event, we believe that negotiated resolution of this issue is to be preferred over the broad waiver proposed by S. 1617 * * *."

That, at least, gets us into the realm where you recognize there is a significant burden out there on the States, and I appreciate that.

Mr. MacCleery. We do recognize there is a problem and one that we can work together to come up with a mutually acceptable solution.

Senator Wallop. Now, Mr. Habicht, if you could give us your testimony on S. 1617 and summarize to the extent possible, I would appreciate that. The subcommittee has a number of witnesses yet to go through.

STATEMENT OF F. HENRY HABICHT II, ASSISTANT ATTORNEY GENERAL, LAND AND NATURAL RESOURCES DIVISION, DEPARTMENT OF JUSTICE

Mr. Habicht. Thank you, Mr. Chairman.

With that and with your indulgence, I will submit my written statement for the record and summarize briefly and then give you the latest up-to-date perspective on our discussions with the States. We at the Department of Justice also recognize that because there is such a strong concern on behalf of the States, we believe that this is a matter that requires the Federal Government's attention and we have been proceeding with discussions with State representatives with that in mind.

I appreciate the chairman's calling of this hearing to accommodate the schedules of the State attorneys general who have been involved in these discussions as well.

Very, very briefly, in terms of background, as the subcommittee well knows, prior to 1972 quiet title actions against the Federal Government were barred in Federal court, and in 1972 there was a limited waiver of sovereign immunity with regard to quiet title actions, such that actions could be brought, but only if they were brought within 12 years of the time when the person knew or should have known that there was a Federal claim to the land.

The Supreme Court in *North Dakota* v. *Block*, as you know, which applied that limitation to the States, observed that the States may have a sympathetic position, but there also was a great deal of merit to the concern on the part of the Congress that there not be an unlimited number of stale claims burdening the Federal courts.

So the question before the subcommittee and indeed the question before the administration is, first of all, whether States should be permitted without limitation to bring these quiet title actions and, if not, to what extent we can deal with the problems that may exist and address those problems surgically.

Our perspective on this, as I have gone through this in the last year or so, has been as follows: First, on the one hand, the States have sovereign concerns that we take very seriously. Because the States have cited sovereign interests and also because we believe they have sincere concerns that there are disputed lands still out there, that there are significant real property disputes in existence, we need to look at it seriously.

On the other hand, however, as our client agencies have given a perspective on some of the practical concerns here, from the standpoint of the Department of Justice, I hope you can understand we cannot responsibly agree to open up without limitation the Federal courts to new fields of litigation without having a good sense of the nature of the problem and the magnitude of the litigation that might result.

This is particularly true when the doors are being opened to cases that involve, as Mr. Parker indicated, very old evidence, sometimes dating back to the 19th century. These are all the more diffcult and expensive to litigate, and it will have a destabilizing effect on land management.

Also it bears noting, although it may not be entirely satisfactory, there are avenues for the States to pursue to quiet title as they have over many decades; for example, coming to Congress.

In listening to the proceedings this morning, it is apparent there are avenues for coming to Congress. There are also administrative avenues for going to BLM and seeking resurveys in cases where the survey lines may have been obliterated or have raised questions.

Based on the foregoing analysis, on balance it indicates that we need to maintain our opposition to S. 1617 which is an unlimited lifting of the statute of limitations. But we have not wanted to end the Federal involvement there and we have been talking to the States. Our goal is to get as precise an understanding as we can of what the States concerns are, ideally to get an idea of what kind of lands they are particularly concerned about so that we can resolve those issues without unlimited new litigation.

We have met periodically over the last year and a half and I think from both our perspectives, those talks have not been as informative to one another as we might have liked, but I think they have shown progress. Just yesterday we met with a number of State attorneys general, and I think made real progress, from my standpoint at least, in understanding the concerns and trying to explore a way to surgically address those concerns.

So, in short, I think as indicated in the written testimony, the Federal land management process is one that envisions State/Federal cooperation and communication, indeed even in two of the litigated cases, for example, Ruby Lake and Yuba Goldfields, the notice that was found by the Federal courts was notice that was based on the consultative process, the communication between State and Federal Government over management of the particular lands at issue there.

So there is a process in place and we need to work around that and recognize that process, so there is notice, but if there is a problem there is also a two-way street here we have to address.

Again, without any limitation on litigating these cases, the farther we get into the future, obviously the more stale the claims get, the more difficult the evidence is to adduce, and the more susceptible the Federal court process is to delay and costly litigation.

So I will just summarize in the interests of time. But I am interested in working with the subcommittee and certainly with working with the States more.

I think after yesterday's meeting, we have made some headway and I certainly want to make a personal commitment to work with the States in the coming weeks, and try to commit that before the end of the spring, to come up with a resolution one way or the other of this issue. For example, Attorney General Jones of Idaho, who you will be hearing from, identifies some specific State areas of concern which I think is an essential first step to our getting somewhere on this issue.

In the Land and Natural Resources Division at the Department of Justice, we have been committed to sitting down with the States on a host of issues in the environmental enforcement area, in the area of water rights litigation, and in this area.

It has been difficult, but I think it is important for us to keep it moving and try to commit to getting a resolution, as I say, one way or the other in the very near future.

Thank you.

[The prepared statement of Mr. Habicht follows:]

U.S. Department of Justice

STATEMENT

OF

F. HENRY HABICHT II
ASSISTANT ATTORNEY GENERAL
LAND AND NATURAL RESOURCES DIVISION
DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER
AND RESOURCES CONSERVATION
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

ON

S. 1617 - QUIET TITLE LEGISLATION

MARCH 4, 1986

QUIET TITLE TESTIMONY

Mr. Chairman, my name is F. Henry Habicht. I am the Assistant Attorney General of the Land and Natural Resources Division of the Department of Justice and I appreciate the opportunity to present the views of the Department on S. 1617. This bill, which amends 28 U.S.C. 2409a(f), would exempt the states from the 12-year statute of limitations applicable to quiet title actions against the United States. Section 2409a(f) provides that the 12-year statute of limitations shall begin to run against the party claiming land at such times as "the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." Thus, the statute begins to run when the plaintiff has actual or constructive notice of the federal government's adverse claim.

A useful starting point in analyzing the proposed legislation is the May 1983 Supreme Court decision, Block v. North Dakota, 461 U.S. 273 (1983). In that case the Court decided three important issues related to the Quiet Title Act of 1972: first, that Congress intended the Quiet Title Act to provide the exclusive means by which adverse claimants can challenge the United States' title to real property; second, that the limitations period in the Act which bars any suit unless filed within 12 years after the cause of action accrued, is fully applicable to a state; and third, that a dismissal pursuant to the limitations provision of the Act does not quiet title to the disputed land in the United States, but rather bars further litigation unless initiated by the United States.

S. 1617 would legislatively overrule the Supreme Court's decision by allowing a state to commence a quiet title action against the United States at any time, regardless of when the cause of action accrued. In addition, it would require the Secretary of the Interior to annually report to Congress on the status of the negotiations of state claims.

Before getting into the specifics of our position on the proposed legislation, I thought it might be useful to spend a few minutes outlining the history behind the enactment of the Quiet Title Act. As the Supreme Court noted in Block v. North Dakota, the states, like other entities, are barred by federal sovereign immunity from suing the United States in the absence of an express waiver of this immunity by Congress. It was therefore not until passage of the Quiet Title Act that Congress elected at all to waive the immunity of the United States with respect to suits involving title to land.

After lengthy deliberation on the proposed Quiet Title Act, Congress determined that there should be some limited waiver of sovereign immunity for those wishing to assert land title claims against the United States. Ultimately it was decided that, in the interests of certainty and repose, the waiver would be circumscribed by a 12-year statute of limitations. The logic of this rationale was underscored by the Supreme Court in Block which said if there were no 12-year statute of limitations, "an unlimited number of suits involving stale claims might be instituted."

The Department's position is that S. 1617 as drafted should not be enacted. In the Department's view, the bill's application is too broad in that it opens up the United States to any kind of potential quiet title action by a state, no matter how longstanding or open the claim of the United States has been. Quiet title actions are costly, time consuming and resource intensive -- often involving situations where records are lost, destroyed or difficult to locate. At all times, but particularly in these days of tight budgets and fiscal constraint, it is the Department's view that public resources should be committed to additional and new litigation only for truly pressing and significant matters, where the need and the returns merit the substantial investment of time and money.

In past months, we have analyzed this issue at some length because our colleagues in the Western states have raised this as an issue, and because we are committed to communication and a close relationship with the states. To the extent that a real problem exists, we do not want to ignore it. But at the same time, concern over creating unrestricted opportunities to litigate costly and complex cases should counsel restraint until we understand the scope of the problem and can conclude that opening the doors of the courts to litigation of such old claims is the best solution to that problem.

In trying to assess how many significant unresolved claims are at stake, the Department has asked the states to identify such claims but they have been unable to do so with any degree of certainty. Therefore, we have no idea of the number of claims which might be brought if the statute were eliminated. Our concern is that a wholesale waiver could wreak havoc on the United States' land management responsibilities and could have a major budgetary impact even beyond increased litigation costs alone.

The federal government's land management responsibilities involve many millions of acres of public land. We have made major investments in these lands in terms of planning and development. Mineral leases and permits have been issued on many of the rivers and lands. Eliminating the statute of limitations and opening all these properties to suit by the states would have a chilling effect on these activities.

Further, those who receive lands from the United States through patent conveyances could never be assured of secure title in the lands conveyed to them if states were able at any time to challenge the United States' title to land. Eliminating the statute of limitations could have a chilling effect on these transactions as well.

One of the concerns the states have raised in justification of their support of S. 1617 is that they believe they do not receive adequate notice of the United States' claims to lands. However, it should be pointed out that the United States has in place many formalized procedures for notifying the states and other interested parties of its land transactions. For example, the Bureau of Land Management provides notice of all its leasing activities through local newspaper announcements and other procedures. The states have many incentives to follow these activities because, in some instances, they are entitled to 50% of the revenues from the leases. Further, the Forest Service publicizes the comprehensive land management plans devised for managing its property. Again, the states are aware of the contents of these plans as they are normally interested participants in the public land planning process.

In addition, it might be useful to review a few examples of the types of notice federal courts have found sufficient in specific quiet title cases brought by the states in which the statute of limitations defense by the United States was upheld. In each of these cases, the notice was clear and unambiguous and more than sufficient to put the state on notice that the United States was claiming land within its boundaries.

In California ex rel State Lands Commission v. Yuba Goldfields, Inc., decided in 1983, the court determined that participation by California in planning and negotiating activities which resulted in federal ownership of certain property in California was sufficient to put California on notice of the United States' interest in the property. Since these activities had occurred 12 years before suit was brought by California to claim the property, the court ruled the claim was barred by the statute of limitations.

In Nevada v. United States, brought in 1978, the court ruled that the United States' letter to the Deputy Surveyor General of Nevada expressing the United States' intention to acquire the Ruby Lake bed for a wildlife refuge was sufficient notice to trigger the 12 year statute. As further proof of Nevada's notice, the court noted that the Deputy Surveyor General, the Governor and the Attorney General of Nevada jointly signed an affidavit disclaiming any interest by the state in the lake bed.

Furthermore, the states do have several options for resolving land disputes or for determining whether the United States has an interest in certain lands. The states can, and often do, petition Congress for a legislative resolution of their land claims. In addition, the states can petition the Executive to resolve a title dispute either in court or through a negotiated settlement.

To determine the United States' interest in certain lands, the states can use an existing administrative procedure. Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745) grants the Secretary of the Interior authority to issue recordable disclaimers of interests in lands. The objective of a disclaimer is to eliminate the necessity for court action or private legislation in those instances where the United States asserts no ownership or record interest in the land in question.

Despite our belief that the statute has not operated unfairly and because of our respect for the states as sovereigns, the Department has, over the last year, aggressively sought to address the states' concerns about the statute. We have, in the last year alone, initiated numerous meetings with the states in an effort to work out a mutually satisfactory resolution of our differences. Most recently, and as a result of our negotiations, the states submitted a compromise proposal by letter to Attorney General Meese. While we believed that particular proposal was too far-reaching, we were prepared to develop a counterproposal which would have moved us closer to a final compromise. Unfortunately, shortly after the Attorney General received their letter, a representative of the states advised us that they were withdrawing the compromise and were rethinking their position.

In order to focus upon and address this issue, the United States is willing to continue to work closely with the states on determining the scope of the problem. Our strong interest in repose and certainty counsels us to resist unrestricted litigation of old land claims, but at the same time, our interest in the concerns of states as sovereigns leads us to continue to want to work through the issue with them and to identify their precise areas of concern. When we have successfully concluded this process, we will report back to you so that legislation, if appropriate, can be considered at that time. Thank you for this opportunity to testify.

Senator WALLOP. Mr. Habicht, thank you. Let me just say that I have a statement from Senator Simpson on this legislation.

[The prepared statement of Senator Simpson follows:]

STATEMENT OF SENATOR ALAN SIMPSON ON S.1617, A BILL TO PROVIDE FOR MORE EFFECTIVE MANAGEMENT OF LANDS OF THE UNITED STATES

I COMMEND MY COLLEAGUE AND FINE FRIEND, SENATOR WALLOP, FOR HOLDING THIS HEARING ON S.1617. THIS LEGISLATION IS INTENDED TO ADDRESS THE PROBLEMS OF STATES WHICH ARE REQUIRED TO DETERMINE TITLE DISPUTES WITH THE FEDERAL GOVERNMENT OVER PARTICULAR LANDS LYING WITHIN THE BORDERS OF THE STATE.

WYOMING IS PRESENTLY FACING THE PROSPECT OF A RE-SURVEY OF A LARGE PORTION OF LAND LYING WITHIN THE POWDER RIVER BASIN IN WYOMING. IT MAY WELL BE THAT THIS RE-SURVEY WILL RAISE SERIOUS QUESTIONS AS TO THE ACTUAL OWNERSHIP OF LAND WHICH IS NOW FEDERAL LAND BUT WHICH MAY IN FACT -- AFTER THE RE-SURVEY FACTS ARE IN -- ACTUALLY PROVE TO BE STATE LAND.

THIS LEGISLATION WILL PROVIDE A MECHANISM FOR WYOMING AND SIMILARY SITUATED STATES TO BRING AN ACTION AGAINST THE FEDERAL GOVERNMENT IN ORDER TO SETTLE AND RESOLVE SUCH DISPUTES SO THAT THE APPROPRIATE GOVERNMENT ENTITY CAN EXERCISE ITS PROPER JURISDICTION. IT WILL BRING ABOUT AN END TO DISPUTES WHICH OTHERWISE WILL REMAIN UNRESOLVED OR BE A POINT OF CONTINUING CONTENTION BETWEEN A STATE AND THE FEDERAL GOVERNMENT.

IN ADDITION, THE LEGISLATION WILL PROVIDE FOR NEGOTIATIONS AND A REPORT TO BE MADE ON THE STATUS OF THE NEGOTIATIONS BETWEEN STATES AND THE UNITED STATES REGARDING LANDS ADMINISTERED BY THE DEPARTMENT OF THE INTERIOR. I BELIEVE THAT THIS LEGISLATION WILL RESULT IN CLARIFYING THE LEGAL TITLE TO DISPUTED LANDS AND THUS INCREASE THE EFFICIENCY AND CERTAINTY OF LAND OWNERSHIP BETWEEN THE UNITED STATES AND INDIVIDUAL STATES, SUCH AS WYOMING.

IT IS FOR THIS REASON THAT I COSPONSORED S.1617. I AM VERY PLEASED TO LEND MY SUPPORT FOR THIS IMPORTANT PIECE OF LEGISLATION. I COMMEND MY SENIOR COLLEAGUE SENATOR MALCOLM WALLOP FOR ADDRESSING THE ISSUE!

Senator **Wallop**. As I understand it, there is a meeting tomorrow with the Attorney General and some of the States attorneys general who are in town. I like the time frame that you laid out, that by late spring we might be able to find some happy resolution of all this.

I understand some of the problems that you bring up about sort of open-ended access to quiet title, but I think I hear you saying you understand some of the problems that they have.

Notice is sometimes not all that clear in the minds of some who are notified by the processes which you just identified, or there would not have been the surprise. Notice, I guess, sometimes results as a consequence of experience. Once you have been had three or four times in the court, then you consider certain things noticed that you might not have felt were so explicit in days gone by. So maybe notice is a little clearer today because of court decisions than it was yesterday, not really what we would hope to get out of this process.

A sort of process of State deduction would require them to enter into a whole variety of monitoring programs in order just to protect their own trusteeship obligations. I would appreciate that.

I, as well as other Members of the subcommittee, have a number of questions that we will submit to the three of you on this legislation We would hope to push us to some kind of agreeable understanding between the States and the Federal Government or some kind of understanding as to what legislative resolution might, as you suggest, surgically deal with the problem.

So I thank you. I think that is all you were here to do, Mr. Habicht, and I think, Mr. McCleery, I have cleared your deck.

Mr. Parker, you have the privilege of remaining all by yourself. The next legislation which I wish to take up is S. 2031 on which I have the privilege of turning to my colleague from Louisiana, to Senator Johnston, for his opening statement.

STATEMENT OF HON. J. BENNETT JOHNSTON, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator **Johnston**. I thank you very much, Mr. Chairman. Mr. Chairman, S. 2031 is a bill that releases conditions on certain lands in Calcasien Parish, for the purpose of developing these lands as an industrial park.

The background, very briefly, of this legislation is that in the mid-fifties with a great deal of fanfare, local property owners in the Lake Charles area donated some property to the Federal Government. In exchange for this land, the city and the parish were told that the Air Force would maintain a permanent air base in the area. The Air Force did designate the base as permanent in 1958.

But in 1961, it abruptly decided to close the base. Shortly thereafter, the property was declared surplus, land divided between government agencies with certain deed restrictions limiting the development on these lands to either recreation or educational purposes.

Now, the problem is that we want to use that property for other purposes. Most of it has remained vacant and unused all these years.

Mr. Chairman, the Lake Charles area now has 14.1 percent unemployment. We want to use Chenault Air Force Base as an industrial park. It has a fine runway, and there are other areas that will work very well as an industrial park. At 14.1 percent unemployment, the need to attract jobs in the Lake Charles area is overwhelming.

All we are asking is that we lift these restrictions on property which has been donated back to local government authorities by the Federal Government.

The key here, I think, Mr. Chairman, and the thing that makes this bill overwhelmingly irresistable is that this property was initially owned by citizens of the Lake Charles area and donated to the Federal Government for the purpose of maintaining a permanent air base. Instead, the Air Force base was closed after only a couple of years.

So I think it is very appropriate to remove the current use restrictions on the property so that the property can be put to a more productive use.

Congressman John Breaux from the Seventh Congressional District has similar legislation in the House and would like to make a brief statement. We also have the mayor of Lake Charles here, Ed Watson, and others who are prepared to testify.

[The prepared statement of Senator Johnston follows:]

STATEMENT OF SENATOR JOHNSTON ON S. 2031 - A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO RELEASE RESTRICTIONS ON CERTAIN PROPERTY LOCATED IN CALCASIEU PARKS, LOUISIANA

Mr. Chairman, I very much appreciate your scheduling this hearing today on S. 2031, a bill I introduced to release conditions on certain lands in Calcasieu Parish, Louisiana, for the purpose of developing these lands as an air industrial park.

In the mid 1950's Lake Charles and Calcasieu Parish began to put together a package of land and improvements in anticipation of the expansion and growth of Chenault Air Force base. The City and the Parish were told that in exchange for these lands and improvements, the Air Force would maintain a permanent air base in the area. The Air Force did designate the base as permanent in 1958 but in 1961 abruptly decided to close it.

The property has since been declared surplus by the Federal Government and divided between several local government agencies with certain deed restrictions limiting the development on these lands to either educational or recreational purposes. Portions of the property have been used under these conditions successfully for the past 13 years. The majority of the property, however, has remained essentially unused since the base was abandoned.

The local government entities and the citizens of the area are now looking to this abandoned facility as a potential site for a large scale air industrial park that would take advantage of the main runway and runway system already in place. A study undertaken a few years ago indicates the project is indeed feasible. However, before such a park can be developed, it will be necessary to remove the current use restrictions on the property. That is what my bill does; it simply releases these restrictions so that the property can be put to a more productive use.

Mr. Chairman, I would like to make two additional brief points. First, it is important to remember that the local citizens have already paid for this land once--when the land was donated and the improvements made in exchange for a commitment that Chenault be made a permanent facility. This is in no way a giveaway of federal lands, and I think it is important to keep that in mind. Secondly, Lake Charles' current unemployment rate of 14.1 percent is the highest of any major metropolitan area in Louisiana. The area is heavily dependent on the agricultural, petrochemical, and oil related industries. As a result it has been devastated by job losses and business failures in recent months. This legislation provides us with an opportunity to do something very positive, at little or no cost, for a part of the country that has not had much good news lately.

Again, I want to thank you for holding this hearing today, and I hope that the Committee can move expeditiously on this matter.

Senator **Wallop**. Bennett, we will hear Congressman Breaux's statement and then the administration's, and then I am going to go back down through the witness list of panels as they were established in the beginning, and then we will get to Mayor Watson as we run down through the list of the panels.

Senator **Johnston**. Fine.

Senator **Wallop**. John, you are welcome.

STATEMENT OF HON. JOHN B. BREAUX, A U.S. REPRESENTATIVE FROM THE STATE OF LOUISIANA

Mr. **Breaux**. Thank you very much, Mr. Chairman and my colleague from Louisiana. I am very pleased to be able to be here on the legislation that is before the Senate, S. 2031. It is, as Senator Johnston has indicated, a companion bill to the one that I introduced in the House, H.R. 4022.

I think what we are doing, Mr. Chairman, is trying to help a community which is desperately seeking to help itself. As Senator Johnston has correctly pointed out, the property in question, approximately 1,500 acres of land in Calcasieu Parish, was originally owned by the people in Calcasieu Parish. Property was donated by them for the purpose of having an air base established many, many years ago.

Unfortunately, times changed. The air base was closed. The property ultimately reverted back to the local governing bodies and governing officials. They own the property today. The representatives of three of those local bodies are with us today, the mayor of the city of Lake Charles, the president of the school board, and the president of the police jury, as we call our parish system in Louisiana. There is, also, a fourth property owner, the Sowela Technical Institute, located at Lake Charles, LA, which operates a vocational-technical school.

These are the local owners of the property. The problem is that there are some restrictions on how the property can be used. What we would like to see by means of this legislation, is removal of the use restrictions in order that the local governing bodies can make the maximum use of the property.

Maximum use of the property in 1986 is to establish an industrial park. Senator Johnston has pointed out, very correctly, that we are in a State that has the second highest unemployment in the Nation. Only one other State in the United States has as high an unemployment figure as Louisiana does.

This area in Louisiana has one of the highest unemployment levels in our State. So what the local officials are desperately trying to do is to seek a way to help themselves, and the way that they have decided is the best approach is to take this 1,500 acres, on which there is a golf course, which is a beautiful golf course that they have developed, leave that intact, do not touch it, do not mess up that recreational use, but to use the rest of the property for an industrial park so that they can seek to attract industry.

Why do it legislatively? The mayor's statement will address that. I point out in my statement, which I would ask unanimous consent that it be made part of the record—→

Senator **Wallop**. It will be.

Mr. **Breaux** [continuing]. That there is a serious economic emergency in this part of the country and this part of the State. I am very concerned that if we try to remove the restrictions through other means, we would never get it done in time to properly fit it into the economic development plan for the local governments.

Bear in mind, local governments own the property. The property belongs to these governmental bodies right now. They are not asking for the removal of one restriction, of course, and that is the restriction which would continue to apply and allow the property to revert back to the United States if the Nation ever needed it during a time of national emergency.

They are not asking for that. They are just asking that it can be used for the highest value that the property can be put to.

[The prepared statement of Mr. Breaux follows:]

STATEMENT BY HONORABLE JOHN BREAUX (D-LA)
BEFORE THE SENATE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION
MARCH 4, 1986

THANK YOU FOR HOLDING THESE HEARINGS TODAY AND FOR PROVIDING ME AND MY CONSTITUENTS THE OPPORTUNITY TO TESTIFY BEFORE YOU.

MR. CHAIRMAN, FOUR PUBLIC BODIES IN MY CONGRESSIONAL DISTRICT HOLD TITLE TO AND ARE THE OWNERS OF PROPERTY WHICH IS ENCUMBERED WITH USE RESTRICTIONS. THE RESTRICTIONS FOR EDUCATION AND RECREATIONAL PURPOSES, SET FORTH BY THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE AND THE DEPARTMENT OF THE INTERIOR IN 1973, HAD TO BE AGREED TO BY THE FOUR LOCAL PUBLIC BODIES IN ORDER FOR THEM TO OBTAIN OWNERSHIP OF WHAT WAS, AT THAT TIME, SURPLUS FEDERAL PROPERTY. S. 2031 WOULD REMOVE THOSE USE RESTRICTIONS, WITH REASON AND JUSTIFICATION.

THE FOUR PUBLIC BODIES, REPRESENTED BY INDIVIDUALS SITTING WITH ME AT THE TABLE, ARE THE CITY OF LAKE CHARLES, THE CALCASIEU PARISH POLICE JURY, THE CALCASIEU PARISH SCHOOL BOARD AND THE SOWELA INSTITUTE, A VOCATIONAL TECHNICAL SCHOOL SUPERVISED BY THE LOUISIANA BOARD OF SECONDARY AND ELEMENTARY EDUCATION. AS A GROUP THEY ARE STRONGLY UNIFIED IN THEIR REQUEST TO HAVE THE USE RESTRICTIONS LIFTED IN ORDER TO ACHIEVE ECONOMIC REVITALIZATION OF THE CITY OF LAKE CHARLES AND CALCASIEU PARISH. A KEY COMPONENT IN THE COMMUNITY'S ECONOMIC DEVELOPMENT CAMPAIGN IS THE ESTABLISHMENT AND OPERATION OF AN INDUSTRIAL PARK ON THE SITE OF

WHAT WAS, ABOUT 30 YEARS AGO, CHENNAULT AIR FORCE BASE. APPROXIMATELY 1500 ACRES OF PROPERTY DIVIDED AMONGST, AND OWNED BY, THESE FOUR LOCAL PUBLIC BODIES, ARE ENCUMBERED BY THE USE RESTRICTIONS ON WHAT WAS ONCE AN AIR FORCE INSTALLATION.

THOUSANDS OF JOBS HAVE BEEN TERMINATED IN THE CITY AND THE PARISH IN RECENT YEARS BECAUSE OF THE DECLINE IN THE OIL, GAS AND PETROCHEMICAL INDUSTRIES. LAKE CHARLES AND CALCASIEU PARISH HAVE CONTRIBUTED SUBSTANTIALLY TO THE PROVISION OF BOTH CRUDE AND REFINED OIL AND RELATED PETROCHEMICAL PRODUCTS TO THIS NATION FOR OVER 30 YEARS. MAJOR REFINERIES WHICH PUMPED THE GAS, OIL AND REFINED PRODUCTS THROUGH EXTENSIVE PIPELINES THROUGHOUT THE UNITED STATES, OIL DISCOVERED AND BROUGHT IN OFF THE COAST OF LOUISIANA, HAVE EITHER SHUT DOWN OR SCALED BACK HEAVILY IN OPERATIONS. FURTHER CRIPPLING THE AREA HAS BEEN THE SEVERE DEPRESSION WHICH HAS STRICKEN AMERICAN FARMERS.

ENERGY AND AGRICULTURE HAVE SERVED AS KEY ECONOMIC UNDERPINNINGS TO THE LOCAL ECONOMY OF THE AREA. COMMENDABLY, AND I APPLAUD THEIR FORESIGHT, INITIATIVE AND AGGRESSIVENESS, THE LOCAL COMMUNITY, IN UNISON, HAS FOCUSED ITS PEOPLE, TALENTS, AND TIME IN IDENTIFYING AND DEVELOPING ALTERNATIVES TO EXPAND AND DIVERSIFY THE ECONOMIC BASE. MORE JOBS ARE NEEDED. PEOPLE WANT TO WORK. LAKE CHARLES AND CALCASIEU PARISH BOAST A LARGE WORK FORCE, HIGHLY SKILLED AND TRAINED, WHICH HAS BEEN UNEMPLOYED FOR SOME TIME. COMBINING THIS CAPABLE WORK FORCE WITH THE POTENTIAL ECONOMIC FORCE OF INDUSTRIAL DEVELOPMENT ON THE 1500 ACRE SITE

PROMPTED MY CONSTITUENTS TO CONTACT ME AND LED TO INTRODUCTION OF THIS LEGISLATION IN BOTH THE SENATE, BY SENATOR JOHNSTON, AND IN THE HOUSE, BY MYSELF.

CLEARLY, THE LAKE CHARLES AND CALCASIEU PARISH AREA NEEDS JOBS. CLEARLY, THE USE RESTRICTIONS NOW IN PLACE AND THE REMOVAL OF THEM, ARE BOTH THE PROBLEM AND THE SOLUTION FOR ENABLING THE SITE TO ACHIEVE ITS FULLEST POTENTIAL. THIS LEGISLATION REMOVES THE USE RESTRICTIONS EXCEPT ONE, WHICH IS TO HAVE THE PROPERTY REVERT BACK TO THE UNITED STATES DURING A TIME OF NATIONAL EMERGENCY.

LOCALLY, THOUGH, MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, AN ECONOMIC EMERGENCY NOW EXISTS. WITH PERSISTENTLY HIGH UNEMPLOYMENT, AND BUSINESS REVERSALS, PAYROLLS HAVE BEEN REDUCED, CONSUMER SPENDING HAS DECLINED, THE TAX BASE FOR LOCAL AUTHORITIES, SUCH AS EDUCATION AND PUBLIC FACILITIES AND PUBLIC SERVICES FOR POLICE, FIRE PREVENTION, AND FLOOD CONTROL, HAVE BEEN CUT BACK. REMOVAL OF THESE USE RESTRICTIONS IS THE ANSWER TO REBUILDING THE AREA, RESTORING JOBS, REVITALIZING LOCAL BUSINESSES AND COMMERCE.

PUBLIC FORESIGHT, INITIATIVE AND AGGRESSIVENESS, GENERATED BY THE PRIVATE SECTOR, SHOULD BE REWARDED. THE FEDERAL GOVERNMENT DOES NOT OWN THE PROPERTY. IT DOES, HOWEVER, ACT AS THE RESTRAINT PROHIBITING THE PROPERTY OWNERS AND AN ECONOMICALLY DEPRESSED COMMUNITY FROM DEVELOPING THE PROPERTY TO ITS MAXIMUM potential. The local people ask for nothing more than the removal of limitations which have been placed on use of their property.

Without this legislation, lengthy and costly negotiations would have to be pursued to try to achieve the lifting of only some of the use restrictions. To have the other restrictions lifted would require a surplus property declaration and reversion back to the Federal government, and implementation of Federal surplus property disposal procedures, all of which threatens continued local ownership of the property should Federal agencies decide to claim the surplus property. Loss of a large portion of the property, including the runway, jeopardizes the entire industrial development project. Keeping the property intact, in local ownership, and unencumbered of use restrictions is requisite for the project's success.

We in the Congress and the Federal government can reward this private sector intiative by removing these use restrictions. We can demonstrate to the community the Federal government's compassion, consideration, and appreciation of their efforts. For many years, this community has helped to fuel the nation and, in its time of need, the nation's government has the power to aid it by permitting the local governing bodies to use their property to help themselves to their greatest potential. Current use practices do not allow for that potential to be achieved. Economic conditions urge that it be allowed to happen. The community will make it happen. For these reasons, I request the subcommittee's favorable consideration and approval of the bill.

Mr. **Breaux**. So with that, Mr. Chairman, if it is appropriate may I make introductions, or do you want to hear the administration next?

Senator **Wallop**. If you wish, you may introduce the mayor and his government colleagues, and then, after I hear from the administration, I will go back down through the panels as they were scheduled.

Mr. **Breaux**. Let me ask Mayor Ed Watson if he would go ahead and make his comments, if that is suitable.

Senator **Wallop**. No. If you would introduce him, that is fine, but then I want to go back on the schedule here for the administration and run down through my panels.

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 2031

Mr. **Parker**. The legislation that we are considering would direct the Secretary of the Interior to release all restrictions, conditions and limitations on the use or conveyance of the lands in Calcasieu Parish.

Except for two of the deeds listed in subsection (c) of the bill, the deeds of conveyance were issued by the U.S. Department of Health, Education, and Welfare, now the Department of Health and Human Services, for educational purposes. The Department of Education is the successor agency to the Department of Health, Education, and Welfare with respect to these conveyances and it would not seem appropriate for the Secretary of the Interior to release the restrictions, conditions and limitations stipulated in the bill insofar as they pertain to the surface usage, except for the two parcels conveyed by the former Bureau of Outdoor Recreation, now succeeded by the National Park Service.

We would therefore defer to the Department of Education or HHS in regard to any interest which they may have in the parcels.

The Secretary of the Interior, however, is the appropriate person to release Federal mineral rights on these parcels. Generally, we are opposed to conveyance of Federal mineral rights without adequate compensation to the United States, and this is also the policy that has been legislated by Congress.

S. 2031, however, seems to present a somewhat unique and unusual situation. Since the lands involved were acquired by Calcasieu Parish and then donated to the Air Force in the midfifties, we believe that it appears to warrant an exception to our general policy.

The parish appeared to have donated the lands that they are now seeking the relinquishments on. There are some problems with records which we are unable to verify, but the record appears to justify further consideration of the facts leading to this legislation. While we take no position on the legislation, it is our hope that the Congress can verify the subject lands, that they are in fact those donated by the parish, and determine if these facts warrant the special relief the bill would grant.

In any event, if the Congress makes such a finding, provision should be made for the existing oil and gas lease and any other Federal interest in minerals which occur on these lands.

[The prepared statement of Mr. Parker follows:]

MAR 4 1986

STATEMENT OF JAMES M. PARKER, ASSOCIATE DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE ON S. 2031, A BILL "TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO RELEASE RESTRICTIONS OR CERTAIN PROPERTY LOCATED IN CALCASIEU PARISH, LOUISIANA, AND FOR OTHER PURPOSES.

I appreciate the opportunity to appear before the Subcommittee today to discuss the Department of the Interior's views on S. 2031.

S. 2031 would direct the Secretary of the Interior to release all restrictions, conditions, and limitations on the use or conveyance of certain lands in Calcasieu Parish, Louisiana to the extent that such restrictions, conditions, and limitations are enforceable by the United States. The mandate to release restrictions would not apply to restrictions that relate to a right of access to, or use of, any real property by the United States for national defense purposes in time of war or national emergency.

Except for two of the deeds listed in subsection (c) of S. 2031, the deeds of conveyance were issued by the U.S. Department of Health, Education and Welfare (now Department of Health and Human Services) for educational purposes. The Department of Education is the successor agency to the Department of Health, Education and Welfare with respect to these conveyances. It would not be appropriate for the Secretary of the Interior to release the restrictions, conditions and limitations stipulated in S. 2031 insofar as these pertain to surface usage. We therefore defer to the Department of Health and Human Services with regard to the surface use of the parcels deeded by that Department. The Secretary of the Interior is the appropriate person to release Federal mineral rights on these parcels. Generally we are opposed to conveyance of Federal mineral rights without adequate compensation to the United States. This is also a policy that has been legislated by Congress. Section 209 of the Federal Land Policy and Management Act authorizes the Secretary of the Interior to sell Federal mineral interests under certain circumstances. However that section requires that fair market value be obtained for any Federal minerals that are conveyed. The potential mineral value of the parcels described in S. 2031 is evidenced by the fact that a portion of the lands is included within a Federal oil and gas lease that was issued competitively to Amoco Oil Company in 1985.

Two of the ten parcels that would be affected by S. 2031 were conveyed by the Secretary of the Interior under the authority of Public Law 91-485. That law, enacted on October 22, 1970, amended the Federal Property and Administrative Services Act of 1949 to allow the Secretary of the Interior to sell or lease Federal property for public park or public recreational purposes to any State, political subdivision or municipality. The 1970 Act requires that the lands be used and maintained for the purpose for which they were conveyed in perpetuity. In the event that the property ceases to be used or maintained for the purpose for which it was conveyed, the Act states that the property shall, at the option of the United States, revert to the United States.

In situations similar to S. 2031 we have indicated that release of the restrictions would be inconsistent with this Congressional mandate, and that, if enacted, it could create an undersirable precedent. The lands were conveyed at less than fair market value for a public purpose. Thousands of acres of public land have been conveyed in a similar manner.

We recognize that public needs for land change over the years, and we would have no objection to changing the public use to which the lands are to be put. We are generally opposed to removing all restrictions on the lands without reimbursement therefor. The public use requirement is essential to prevent an unfair windfall at the expense of the United States.

S. 2031 may present a somewhat different situation. We understand that much of the lands involved in S. 2031 were acquired by Calcasieu Parish and then donated to the Air Force in the mid-to-late 1950's. We have been informed that the Parish spent $13,670,000 in acquiring lands, constructing a drainage system and moving its general aviation facilities to a new airport. The commitments were made by the Parish, we are told, in exchange for a commitment from the Air Force to maintain a permanent air base on the lands. This Air Force did designate the base as permanent in 1958, but in 1961 decided to close it.

Since that time a portion of the base has been used by the Parish under various restrictions for a variety of purposes.

The Parish apparently donated the land for the air base which they are now seeking. This may justify further consideration of the particular facts leading to this legislation. However, the Department of the Interior does not have sufficient information to verify that the lands covered in S. 2031 are those donated by the Parish.

While we take no position on this legislation, it is our hope that the Congress can verify that the subject lands are in fact those donated by the Parish and determine if these facts warrant the special relief that the bill would grant.

In any event, if Congress makes such a finding, provision should be made for the existing oil and gas lease, and the Federal interests in the minerals in the land.

This concludes my statement. I will be pleased to answer questions.

Senator **Johnston**. Mr. Chairman, I am advised that there is no Federal interest in the oil and gas here. In fact, since the land has been conveyed back to the local governing bodies, I believe that those minerals are owned by those local governing bodies.

Mr. **Parker**. It is my understanding, Senator, that the minerals were patented out of U.S. ownership in the 1800's, but they were reacquired in the 1950's by the United States, and we do have one oil and gas lease on one of those parcels.

Senator **Johnston**. That is a Federal oil and gas lease?

Mr. **Parker**. Yes.

Senator **Johnston**. But our bill does not address the conveyance of oil and gas.

Mr. **Breaux**. Would the Senator yield?

I think the clear consensus of the local governing bodies is that they are not seeking ownership of the minerals if they do not have them already. I think we can determine whatever the situation is now in minerals.

Senator **Johnston**. We do not deal with that at all. We just deal with these restrictions for educational and recreational use. That is all we want. We want to build an industrial park and get some jobs. We are not interested in oil and gas—unless we find some there and then we might come up with another bill. [Laughter.]

Mr. **Breaux**. I would say particularly they are not seeking the minerals with the current price of oil.

Senator **Wallop**. I have, as well, statements from Senator Long and Congressman Moore to enter into the record.

[The prepared statements of Senator Long and Mr. Moore follow:]

STATEMENT OF SENATOR RUSSELL B. LONG

SENATE ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATERS

MARCH 4, 1986

MR. CHAIRMAN, AND MEMBERS OF THE SUBCOMMITTEE

I WOULD LIKE TO TAKE THIS OPPORTUNITY TO EXPRESS MY SUPPORT FOR S. 2031, AND TO URGE THE SUBCOMMITTEE AND FULL COMMITTEE TO FAVORABLY AND EXPEDITIOUSLY REVIEW THIS IMPORTANT LEGISLATION.

S. 2031 IS SIMPLE AND STRAIGHTFORWARD. THE BILL AUTHORIZES THE SECRETARY OF INTERIOR TO RELEASE RESTRICTIONS ON CERTAIN PROPERTY LOCATED IN CALCASIEU PARISH, LOUISIANA. THE AREA COMPRISES ROUGHLY 1,600 ACRES.

AS A COSPONSOR OF S. 2031, I WOULD LIKE TO ASSOCIATE MYSELF WITH THE REMARKS OF MY GOOD FRIEND AND FELLOW LOUISIANIAN, BENNETT JOHNSTON.

THE REMOVAL OF DEED RESTRICTIONS ON THE CHENNAULT PROPERTY WILL ALLOW THE CITY OF LAKE CHARLES, THE CALCASIEU PARISH POLICE JURY, THE SOWELA TECHNICAL INSTITUTE AND THE CALCASIEU PARISH SCHOOL BOARD TO UTILIZE THIS PROPERTY IN A MANNER WHICH WOULD SUIT THEIR INDIVIDUAL NEEDS.

WHILE EACH OF THE FOUR ENTITIES HOLD A VALID DEED TO SECTIONS OF THE PROPERTY, IT HAS BEEN MUTUALLY AGREED THAT THE PROPERTY SHOULD BE DEVELOPED INTO AN INDUSTRIAL AIR PARK WHICH WOULD BENEFIT ALL THE CITIZENS OF LAKE CHARLES.

THE ECONOMIC BASE OF THE LAKE CHARLES AREA HAS BEEN ADVERSELY AFFECTED BY A DECLINE IN THE PETROCHEMICAL INDUSTRY. THE CITIZENS IN THIS AREA ARE CURRENTLY FACING DOUBLE-DIGIT UNEMPLOYMENT DESPITE NUMEROUS EFFORTS TO IMPROVE THE ECONOMY.

MR. CHAIRMAN, IT IS MY FIRM BELIEF THAT THE REMOVAL OF THE DEED RESTRICTIONS WILL HAVE A POSITIVE IMPACT ON RELIEVING THE DOUBLE-DIGIT UNEMPLOYMENT CRISIS FACING THE LAKE CHARLES AREA. I WOULD, THEREFORE, URGE THE SUBCOMMITTEE AND FULL COMMITTEE TO FAVORABLY REVIEW S. 2031 AND FORWARD IT TO THE SENATE FOR CONSIDERATION.

THANK YOU.

Russell Long

TESTIMONY OF
THE HONORABLE W. HENSON MOORE
MEMBER OF CONGRESS

BEFORE THE SENATE ENERGY AND NATURAL RESOURCES SUBCOMMITTEE ON PUBLIC LANDS

MARCH 4, 1986

MR. CHAIRMAN, I WANT TO THANK YOU FOR INVITING ME TO TESTIFY TODAY RECOGNIZING THE WORK I HAVE DONE WITH THE ADMINISTRATION AND THE SPECIAL CIRCUMSTANCES REGARDING THE LANDS OF THE FORMER CHENNAULT AIR FORCE BASE. I HAVE BEEN WORKING EXTENSIVELY WITH THE VARIOUS FEDERAL AGENCIES INVOLVED TO RELEASE THIS PROPERTY, BUT IT IS MY CONCLUSION THIS LEGISLATION IS NECESSARY TO RESOLVE THE CHENNAULT ISSUE AND ELIMINATE THE RESTRICTIONS ON THE RESPECTIVE LOCAL GOVERNMENTS: THE CALCASIEU POLICE JURY, THE CITY OF LAKE CHARLES, THE CALCASIEU SCHOOL BOARD, AND THE LOUISIANA BOARD OF ELEMENTARY AND SECONDARY EDUCATION.

THE PEOPLE OF THE CITY OF LAKE CHARLES AND CALCASIEU PARISH HAD PUT THEIR FAITH AND THEIR MONEY INTO THE CHENNAULT AIR FORCE BASE IN 1955, ONLY TO BE BITTERLY DISAPPOINTED BY THE CLOSURE OF THE BASE IN 1961. THE CITIZENS OF CALCASIEU PARISH RECEIVED THEIR LANDS BACK IN THE 1970'S, BUT WITH RESTRICTIONS THAT LIMITED THE USE AND VALUE.

I AM ORIGINALLY FROM THE LAKE CHARLES AREA AND SPENT MUCH OF MY BOYHOOD THERE. I REMEMBER THE EXCITEMENT OF THE PARISH AT THE PROSPECT OF HAVING AN AIR BASE AND AT THE TIME, THE FUTURE OF THE PARISH WAS BASED ON THE CONSTRUCTION OF THIS FACILITY. THE PEOPLE PAID FOR THE LAND, IMPROVED IT, AND GAVE IT TO THE AIR FORCE, ON THIS BASIS ALONE THE RESTRICTIONS SHOULD BE REMOVED FROM THE CHENNAULT PROPERTY.

BUT THERE ARE EVEN MORE PRESSING REASONS FOR THE RELEASE OF THE TITLE RESTRICTIONS. TODAY, LAKE CHARLES, AS WELL AS THE REST OF LOUISIANA, ARE FACING A DESPERATE ECONOMIC SITUATION. BECAUSE OF ECONOMIC CIRCUMSTANCES BEYOND THEIR CONTROL MANY INDUSTRIES HAVE SHUT DOWN AND LAKE CHARLES CURRENTLY HAS THE THE 6TH HIGHEST UNEMPLOYMENT RATE IN THE COUNTRY. CHENNAULT AIR FORCE BASE IS A VALUABLE ECONOMIC ASSET TO THE CITY, TO LOUISIANA AND TO THE REST OF THE NATION. THE ECONOMIC DEVELOPMENT OF THE FORMER AIR BASE WOULD MEAN THE CREATION OF THOUSANDS OF JOBS, INDUSTRIES AND TAX REVENUES.

I HAVE WORKED WITH OFFICIALS WITHIN EVERY POSSIBLE FEDERAL AGENCY OR DEPARTMENT THAT WOULD HAVE INTERESTS IN THE CHENNAULT PROPERTY: THE OFFICE OF MANAGEMENT AND BUDGET, THE GENERAL SERVICES ADMINISTRATION, THE DEPARTMENT OF INTERIOR, EDUCATION AND HEALTH AND HUMAN SERVICES. EVERY OFFICIAL WAS STRUCK BY THE SACRIFICE OF THE PEOPLE OF LAKE CHARLES, AND THE INJUSTICE OF THE CITIZENS NOT BEING ABLE TO UTILIZE THE PROPERTY FOR THEIR OWN BEST USE, THE CREATION OF JOBS AND INDUSTRY.

THESE AGENCIES, I FEEL, WOULD RELEASE THE RESTRICTIONS IF THEY COULD--BUT THEY ARE PREVENTED FROM DOING SO BECAUSE OF THE LAW, A LAW WE NEED TO CHANGE. THIS COMMITTEE HAS SHOWN ITS CONCERN BY HEARING THIS BILL TODAY AND I HOPE WILL REPORT S 2031 FAVORABLY. THIS BILL IS NECESSARY AND JUST, AND I HOPE THE COMMITTEE WILL APPROVE AND EXPEDITE THIS MOST NEEDED LEGISLATION. THE PEOPLE OF LAKE CHARLES AND CALCASIEU PARISH DESERVE TO HAVE THIS LAND UNENCUMBERED.

Senator **Wallop**. John, would you like to introduce your mayor, and then I will go back? Mr. Parker, I think that concludes your requirements here today, and I appreciate your going down a rather long and involved and difficult list of bills.

Thank you.

Mr. **Parker**. Thank you.

Mr. **Breaux**. Thank you, Mr. Chairman. I will just be very brief. The local people in Lake Charles can be very proud, I think, of their elected officials who have worked so hard to put this package together and are trying to act on behalf of all the citizens of Lake Charles in a way that is, I think, quite admirable on their behalf.

They did the same type of consensus package when we tried to get the Navy home port in Lake Charles and were successful in doing it. And I am very pleased to say that that same spirit exists today. They are seeking to help themselves.

I would like to at this time introduce Mayor Ed Watson of Lake Charles, and he can introduce his associates that are with him.

Mr. **Watson**. Thank you very much, sir.

I have here on my left Mr. Jim Schooler, who is the president of the police jury.

We also have Mr. Charles Legill with us, who is also a police juror.

Mr. Rodney Vincent is here with us as the parish administrator.

Mr. Billy Moses, sitting down next to the Representative, is the superintendent of education for the Calcasieu Parish School Board.

We also have Mr. Frank Jurnigan, representing the school board itself.

All of these people own property in this particular area.

Senator **Wallop**. Mayor Watson, thank you for those introductions. Now, if you will indulge me, I will go back to the list of panel witnesses that we have scheduled, and I will call on you as that bill comes into play.

Mr. **Watson**. Thank you, sir.

Senator **Wallop**. So I now call the panel on S. 1617, Attorney General Jim Jones of the State of the Idaho; Attorney General Nicholas Spaeth, the State of North Dakota; Mr. Howard Schrinar, commissioner of public lands, the State of Wyoming; Mr. Jan Stevens, supervising deputy attorney general, the State of California.

If I could welcome you gentlemen to the table and ask you, if you would, to basically summarize your statements. We will begin with Attorney General Jones.

STATEMENT OF JIM JONES, ATTORNEY GENERAL, STATE OF IDAHO

Attorney General **Jones**. Thank you, Mr. Chairman.

I must say I appreciate the comments that you made with respect to the BLM testimony. I think that you have a clear understanding of what our legislation intends.

Basically, we contend as soverigns that we ought to be exempt from the application of the statute of limitations. Just because a statute of limitations applies and precludes us from bringing suit, it doesn't mean that the ownership question is resolved. The ownership question is still there and it's still a dispute. The only trouble is that the States cannot go into court and seek to have that dispute resolved.

The Justice Department in the past has talked about a floodgate of litigation which will result if the exemption contained in the bill is enacted. But I don't think that they have any facts to back that up.

As a matter of fact, when the Quiet Title Act was passed in 1972, it was everybody's impression that the statute of limitations, the 12-year statute, didn't apply to the States. So we had the ability to go into court and to litigate the title issue. We didn't think we were limited by the statute, and yet there were very few cases filed. So we have had a test period, and that litigation has not resulted.

But what is going to happen if we have the current status quo where we are limited or where there's any kind of limitation against the States that will cut off our right to go into court, we're going to have to play it safe and file suits, and I fully intend to do that in my State. So what you will have is in order for us to protect ourselves and not being the one that blew the statute of limitations, we're going to have to go into court and file those suits.

One thing that we're looking at in Idaho is a suit that lays out the State's boundaries, and we asked the district court to quiet title to the lake and riverbeds of every mile and every acre of river and lake bed in the State, and let the court resolve it. Let the court determine whether we've had proper notice.

So what is going to happen, I think, is that we are going to see a great increase in litigation.

Now, we have talked to the Justice Department. We've indicated to them that the problem we have is the lands that we received under the equal footing doctrine, the submerged lands and the school trust lands, and we indicated that if we can get an exemption limited to those grant trust lands, then we can probably resolve the difficulty with them.

Mr. Habricht yesterday seemed to be somewhat receptive to that approach. We intend to bring it up with the Attorney General this afternoon and if we can get the relief directed in that area, I think we can resolve these disputes. And we'll not see that great increase in litigation that they're talking about.

[The prepared statement of Attorney General Jones follows:]

TESTIMONY OF
JIM JONES
ATTORNEY GENERAL
STATE OF IDAHO

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER AND RESOURCE CONSERVATION

OF THE

SENATE COMMITTEE
ON ENERGY AND NATURAL RESOURCES

U.S. SENATE

MARCH 4, 1986

Chairman Wallop, other members of the subcommittee:

I am Jim Jones, the Attorney General of Idaho. I appreciate the opportunity to appear here today on behalf of my state and the National Association of Attorneys General in support of S. 1617. This important legislation, which would exempt states from the 12-year statute of limitations in the Federal Quiet Title Act, is essential to good federal-state relations in that it will allow for the peaceful resolution of title disputes between the federal and state governments. The legislation has the strong support of the National and Western Associations of Attorneys General, the National Governors Association, the National Conference of State Legislatures, and the Western States Land Commissioners Association.

In 1983 the U.S. Supreme Court surprised many observers by holding in Block v. North Dakota, 461 U.S. 273, that states are subject to the 12-year statute of limitations contained in 28 U.S.C. § 2409a. Until the Block decision it had been thought that the claims of sovereign states were exempt from statutes of limitations. This is certainly the accepted rule under the common law and under previous decisions of the U.S. Supreme Court (see, Utah Power and Light Company v. U.S., (1917) 243 U.S. 389). When the Federal Quiet Title Act was enacted in 1972 it was not contemplated that the 12-year statute of limitations provided for in the act would be utilized as a bar against state claims. The legislative history of the act does not indicate that Congress intended it to apply to the claims of sovereign states. However, the Supreme Court did apply the 12-year limitation to state claims in the Block decision and it is from that onerous decision that we seek relief here today.

The Block decision merely permits the federal government to avoid a determination of title when a dispute arises between it and a state government over the ownership of certain lands. Although the federal government may proceed forward with legal action to determine the ownership question, the states do not have the ability to do likewise if the limitations period has run. The result is that the ownership question remains in limbo. The title dispute is left unresolved, making proper planning and development virtually impossible.

The greatest difficulty is posed for the public lands states in the West where large holdings of federal land are checkerboarded by significant state-owned lands. Large federal grants were made to these states upon the attainment of statehood under the equal footing doctrine. The grants include the beds of navigable lakes and rivers and two to four sections per township granted for the support of public schools and other public institutions. With the interspersed pattern of ownership and the large acreages involved it is only natural that title disputes will arise. It is, therefore, essential that the states have the ability to resolve such disputes on the merits.

The most common problem posed for Idaho and many of the other public lands states has to do with submerged lands. Title to the beds of navigable lakes and rivers passed to the various states at statehood. The states hold these lands in trust for their citizens subject only to a paramount federal servitude for navigation. Since the federal government often retains ownership of the uplands bordering these submerged lands, determination of title to such river and lakebeds has been a continuing source of controversy.

Most public land states are just beginning to inventory and regulate these submerged lands. Unlike a private owner with less extensive holdings and a greater ability to monitor and control his property, the states are not generally in a position to assess the effect of thousands of federal decisions made over the years with respect to the public domain to determine whether they may constitute an infringement of the state's ownership or control over these large and scattered holdings. Many times decisions are made at the various levels of the federal bureaucracy which can give rise to a claim of federal ownership or control over portions of the state-held submerged lands or other state lands, resulting in a potential defense against any later state action to clear title to the property.

The Justice Department has recognized the need for providing relief to the states with regard to determining title to submerged lands. In testimony presented to the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee on June 13, 1984, F. Henry Habicht, II, the

Assistant Attorney General for Land and Natural Resources, stated as follows:

> Based on our experience in litigation and our discussions with state officials, it appears that the real problem is not with the common quiet title action wherein the United States asserts ownership based on a record of title of which actual or constructive notice is a relatively straight-forward matter of proof. Rather, the problem from the states' perspective arises in situations involving issue of navigability of rivers and lakes coupled with an assertion by the United States of ownership of the bed of that body of water based on actions of which a state claims insufficient notice. These are notice issues of particular concern to the states, because under operation of the equal footing doctrine, title to the bed of navigable waters generally vests in the state upon admission to the Union. (Hearing on H.R. 3917, June 13, 1984, No. 38-6180-843, pp. 13-14)

Mr. Habicht went on to indicate the desirability of a definite notice provision to deal with the submerged lands issue.

However, another issue is of general concern to the states beyond the submerged lands issue. Lands granted to the state for the support of public schools and other public institutions under the equal footing doctrine are also a source of potential federal-state title disputes. Most of the western states received two to four sections in every township for the support of public schools at statehood. These grants were made on the condition that the states promise not to tax federal property located within state boundaries. The grants have been characterized as irrevocable contracts between the states and the federal government. (See, Oklahoma Education Association, Inc. v. Nigh, 642 P.2d 230 (Okl.

1982), Lassen v. Arizona, 385 U.S. 458 (1967)). As a condition of these contracts the states were required to manage the lands as a trustee with the "highest trust responsibility". One might wonder how the state trustees are to carry out that responsibility if they are unable to have a determination of title disputes and to secure absolute control over the lands which constitute the trust corpus for the purpose of managing them for the best interests of the public school beneficiaries. We are asking Congress to provide the means for the state trustees to carry out their duties with regard to trust lands where federal-state ownership disputes exist.

The Justice Department has expressed opposition to a complete exemption of state claims from the provisions of the 12-year statute of limitations. It is contended that such an exemption would result in increased litigation of land claims. Quite frankly, I think the actual situation is just the contrary. That is, failure to exempt state claims will result in increased litigation. A number of states, including Idaho, are contemplating the filing of a number of claims involving title to submerged lands so as to avoid a court holding in the future that some innocuous federal action tolled the statute of limitations. We do not want to be in a position of finding out at some later date that some generally unnoticed federal assertion of control has prevented us from litigating a later-arising ownership dispute. My office is currently working up three cases including one involving the question of ownership of the southern portion of the bed of Lake Coeur d'Alene, so that we do not encounter a future bar by the 12-year limitations period. I note that the State of Alaska is doing likewise with respect to a significantly greater number of claims. My office is also contemplating the possibility of initiating a general quiet title action with respect to all navigable lake and riverbeds within our boundaries so that we do not risk the imposition of the statute of limitations defense with respect to some of the hundreds of miles of navigable rivers within our state or with respect to some of the hundreds of acres of navigable lakes. Such litigation would not be necessary if Congress were to grant the requested exemption. With such an exemption these matters would only be litigated when an actual dispute arose.

Should the Congress decide to grant something other than a complete exemption for state claims, it is essential that a procedure be adopted so as to insure unequivocal notice to the states regarding federal claims. At present the states may be barred where they knew or should have known of a federal claim. As indicated above, this is an onerous standard for the states, given their large and widely-scattered holdings. In previous litigation the Department of Justice has consistently attempted to push the notice element to unreasonable extremes. For example, it has been asserted that Utah should have been aware of a federal claim with respect to Utah Lake at the time Utah attained statehood. Department attorneys have argued that California's participation in a joint federal-state reclamation project should have given it notice of a federal claim to the bed of the Yuba River. In the Block case it was contended that North Dakota should have been aware of and put on notice of a federal claim by virtue of BLM records in Montana. These instances indicate the necessity for an unequivocal notice procedure so that the states are not surprised and precluded from litigating title by virtue of some unnoticed or seemingly unimportant federal action.

The legislation before you today will solve the difficulties I have outlined in my testimony. It will allow for the orderly resolution of title disputes between the federal and state governments. It will reduce, rather than increase, litigation of title questions. I commend it to you as an important means for the improvement of relationships between the federal government and the various state governments.

Senator WALLOP. General Jones, let me assure you of the subcommitee's interest. We will be interested in following the progress of these negotiations because it is of sufficient nature that it causes this subcomittee a lot of concern. We need to know how you view those conversations with the Attorney General.

General Spaeth.

STATEMENT OF NICHOLAS J. SPAETH, ATTORNEY GENERAL, STATE OF NORTH DAKOTA

Attorney General SPAETH. Thank you, Mr. Chairman. I think as you noted earlier, we speak not only in behalf of ourselves, but every attorney general of the United States, every Governor, and every land commissioner, every State.

We have found, to be candid, the position of the Federal Government on this issue to be perplexing. They have stonewalled us for 2 years after agreeing to negotiate with us a couple of years ago when this legislation came up the first time. We have made no progress with them today.

The irony of that result is that nothing has been solved in the interim. For example, in *Block* v. *North Dakota*, the case that got this whole process rolling, we were sitting with a tract of riverbed that is leased to an oil company by both the Federal and the State governments. Because we do not know who owns it, the minerals are sitting in escrow and they can't even draw interest in the interim, so we're both losing money.

There are lots of other examples in the same situation but we are in limbo and we cannot resolve a clear title issue.

I take issue to a great degree with some of the arguments you heard from the gentlemen from the Bureau of Land Management. We are not out to threaten the national wildlife system. I can tell you in the State or North Dakota, for example, there is no wildlife acreage that I can see right now that would be in any way threatened by any quiet title action.

We're only talking about laying claim to land that we think is ours, that we have a colorable claim to. In their position, this threatens them. It's a bit like the thief who is threatened by a reparation system; he has to give back his ill-gotten proceeds. That's all we want. We want what is ours.

The State of North Dakota and every Western State will be forced into the position of filing a lawsuit, like Attorney General Jones mentioned, if we can't get some relief here.

I think that, as I said before, the position of the United States on this issue has been perplexing to all of us. We don't understand why they want to avoid doing something that's good for both of us, and that is clarify title questions where they do exist. That's all we ask.

[The prepared statement of Attorney General Spaeth follows:]

STATEMENT OF NICHOLAS J. SPAETH
ATTORNEY GENERAL OF THE
STATE OF NORTH DAKOTA

BEFORE THE PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION SUBCOMMITTEE OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

MARCH 4, 1986

RE: S. 1617 -- To provide for more effective management of lands of the United States which are subject to conflicting claims or disputes and to require the Secretary of the Interior to report annually thereon.

Mr. Chairman and distinguished members of this Subcommittee:

We appreciate this opportunity to present to you the position of the State of North Dakota concerning S. 1617, which proposes to amend the Federal Quiet Title Act, 28 U.S.C. §2409a(f), to exempt states from the twelve year statute of limitations applicable to quiet title actions against the United States. This legislation is a direct response to a recent Supreme Court decision which has severely curtailed the rights of the states to resolve title disputes with the United States.

In Block v. North Dakota, 461 U.S. 273 (1983) the Supreme Court held, contrary to the holding of the Federal District Court for North Dakota and the United States Court of Appeals for the Eighth Circuit, that the twelve year statute of limitations established by Congress in the Quiet Title Act is applicable to the states as well as private parties. In reaching this decision, the Court rejected the traditional common law rule that states as sovereigns are not subject to statutes of limitations. The effect of this decision has been that North Dakota and other states similarly situated may well have their access to the federal courts cut off in resolving state/federal title disputes. If a state's cause of action arose more than twelve years prior to the enactment of the Quiet Title Act of 1972 or if an officer of the state has failed to properly take steps to protect the state from an encroaching claim of the federal government, the merits of a title dispute may never be resolved.

S. 1617 would overrule the decision of the Supreme Court in the Block case by exempting states from the statute of limitations applicable to quiet title actions against the United States. Accordingly, the legislation would once again restore to the states access to the federal courts so that state/federal title disputes might be resolved.

Since it was the Supreme Court's decision in the Block case which construed the statute of limitations provisions in the Quiet Title Act to be applicable to the states, North Dakota, based on a first hand experience, is keenly aware of the adverse effects the Court's interpretation has had in resolving state/federal title disputes. North Dakota is similarly aware that a remedy to this serious problem must come from Congress and not the courts. Exempting the states from the twelve year statute of limitations contained in the Quiet Title Act, as S. 1617 proposes, will remove the "stumbling blocks" North Dakota and other states have encountered in attempting to reach the merits of the disputes with the federal government.

It does not take a detailed examination of the Block case to put into perspective the difficulties and frustrations North Dakota has experienced in this litigation or to visualize how counterproductive the current construction of the limitations statute has been for states in resolving title conflicts with the federal government. It should be noted -- indeed emphasized -- that the problem we are urging this Subcommittee to address here today is the result of a lawsuit which was initially filed in October of 1978.

The issue in that litigation was simply whether the Little Missouri River, which flows through a portion of western North Dakota, was navigable on February 22, 1889, the date North Dakota was admitted into the Union. There was no dispute that if the Little Missouri River was navigable at statehood, that under the Equal Footing Doctrine, title to the bed of the river vested in North Dakota. Similarly, there was no dispute that if the Little Missouri River was not navigable at statehood, then the federal government would own substantial portions of the bed of the river as a riparian landowner. Notwithstanding the relative simplicity of the issues involved in the Block case, after nearly eight years of litigation the question of navigability is still unresolved.

It is fair to say the issue of navigability remains unresolved today because the Department of Justice, during the entire course of this litigation, has chosen to use the statute of limitations embodied in the Quiet Title Act as an instrument to deny North Dakota the right to have its claim heard on the merits. Regrettably, the holding of the Supreme Court in Block upheld the position of the Department of Justice. In reaching the decision, the Court stated that if North Dakota's suit was barred by the statute of limitations, the courts below had no jurisdiction to inquire into the merits. Since the lower courts made no findings as to the date on which North Dakota's suit accrued, the Court remanded the case back to the Federal District Court for further proceedings.

On remand, the district court conducted a second hearing and ruled that the statute of limitations contained in the Quiet Title Act compelled dismissal of North Dakota's suit only as to thirteen specific tracts of the bed of the Little Missouri River. As for all other portions of the river at issue, the district court quieted title in the State of North Dakota and re-instated its earlier judgment declaring the Little Missouri River to be a navigable river for the purposes of determining ownership.

Once again, however, the federal government has filed an appeal with the United States Court of Appeals for the Eighth Circuit. The federal government contends that the district court erred in determining that the statute of limitations does not entirely bar North

Dakota's suit; and, further, that the district court erred in finding the Little Missouri River to be navigable at the time of statehood. If the Circuit Court of Appeals affirms the decision of the district court, the issue of navigability will finally be resolved, subject, of course, to review by the Supreme Court.

On the other hand, if the Circuit Court of Appeals rules that North Dakota is time barred in bringing its suit, the issue of navigability and ultimately ownership of the bed of the Little Missouri river will remain unresolved. This is so because the Supreme Court specifically stated that, even if the United States obtains a dismissal on statute of limitations grounds, the title dispute will remain unresolved unless the federal government takes the step of initiating the quiet title action itself. Consequently, the result may well be that after nearly eight years of litigation nothing will have been determined except that North Dakota does not have the right to be a plaintiff in this matter. The stalemate and frustrations that North Dakota has encountered may therefore continue unless the federal government takes the unlikely step of initiating the quiet title action itself or unless corrective legislation is adopted.

As the stalemate continues so does the uncertainty as to ownership of the riverbed. This causes considerable confusion, particularly with regard to mineral exploration and development. Developers will be forced to continue obtaining oil and gas leases from both the state and the federal government. This dual leasing is necessary to assure that all potential owners are under lease and must continue until ownership of the river is finally resolved.

It doesn't take much of an imagination to realize that dual leasing reduces the value of leases and in some situations actually discourages leasing completely. I am aware of at least one situation where a developer has expressed interest in leasing tracts of the Little Missouri River from the State of North Dakota. The developer paid the application fee to have the tracts offered for lease but after learning that the question of ownership was still unresolved, withdrew the applications. The tracts to date remain unleased.

While this is just an isolated situation, based on the many telephone inquiries we have received concerning the status of the Little Missouri River litigation, we believe most developers are aware of the title problems of the river and have refrained from submitting applications for lease. Oil and gas developers are understandably not anxious to lease and explore properties on which the issue of title may never be resolved. Those developers who apply for and bid on tracts underlying the Little Missouri River must be willing to take a risk. The risk is that if they are unsuccessful in acquiring a lease from both the state and the federal government the bonus price they pay to secure a lease may be lost.

In the event leases are taken, the confusion is further compounded once drilling and production occurs. Before revenues can be dispersed, ownership must be settled. Accordingly, there are nearly thirty oil and gas wells currently producing in the State of North Dakota for which revenues attributable to the acreage under the Little Missouri River have been suspended. While an accounting for the revenue in those suspense funds has never been conducted, it seems likely that the proceeds could exceed a million dollars. To make matters worse, suspense funds are normally held without obligation to pay interest. Oil and gas developers, therefore, utilize these monies without cost and will continue to do so until the question of ownership is finally resolved. Surely the public interest is not served when oil and gas developers are afforded the opportunity to avoid dispersing revenues to the persons and entities that are rightfully entitled to them because North Dakota is prevented from adjudicating this matter on the merits.

Having pointed out the difficulties, frustrations and confusion that the Block decision has caused in North Dakota, I think it's fair to say that North Dakota is not in a unique situation. Many other states will, if they have not already, experience the problems North Dakota has faced over the past eight years. The need for Congress to perform corrective surgery on the Quiet Title Act is, therefore, not limited to North Dakota. I am hopeful, however, that by noting for you the experiences of North Dakota, the broader implications of the Block decision may be more evident.

In my view, exempting states from the statute of limitations -- and allowing the states access to the federal judiciary to resolve state/federal title controversies -- is vitally important to orderly management and utilization of public lands and the natural resources thereon. Since both the federal government and the states share in the responsibility for orderly management and development of public lands, it is in the interest of both parties to eliminate confusion and resolve these title controversies.

We believe that the amendment to the Quiet Title Act as set forth in S. 1617 provides the remedy needed to promptly and finally resolve title disputes and once again bring about orderly development and management of public land. On behalf of the State of North Dakota, I, therefore, urge your support.

Senator WALLOP. Thank you very much.

Now, as is always the case, it is a pleasure to welcome somebody from my home State to give witness. We may not have the largest percentage of public lands by any stretch of the imagination within our borders, but there is a sufficiency of them and it is of significant consequence to us.

Howard Schrinar, I am very happy to have you here and give the State of Wyoming's position.

STATEMENT OF HOWARD M. SCHRINAR, COMMISSIONER OF PUBLIC LANDS, STATE OF WYOMING

Mr. SCHRINAR. Thank you, Mr. Chairman, and we are very proud that our Senator from Wyoming was the one that introduced S. 1617.

Mr. Chairman, my testimony is offered on behalf of not only the State of Wyoming, but every other western State which is a member of Western States Land Commissioners Association.

I've also been requested by the Governor of Wyoming to tell the Committee a letter is on its way signed by Governor Herschler; with copies sent to the Governors of Alaska, Idaho, Nebraska, North Dakota, and Utah; fully supporting S. 1617 and I would request that it be admitted into the record.

Mr. Chairman, I have provided in my testimony a couple of exhibits which I think graphically portray the situation in which the current provisions of the Federal Quiet Title Act put the individual western States.

If you would look at the BLM map of Wyoming which I have provided,[1] the blue sections on that map represent State lands scattered throughout the State of Wyoming. Those lands abut 10 national forests, innumerable national monuments, national recreation areas, BLM districts. It is virtually impossible, Mr. Chairman, for a land administering agency like the State Land Office in Wyoming to attract the millions of activities that occur on Federal lands to ensure that they are not conflicting with any title claim that the State of Wyoming may have to those lands.

The second example, and a concrete example, Mr. Chairman, which I would like to bring to the committee's attention, I have attached exhibits 1, 2, and 3 to my testimony, and I would like to just briefly go over it. These exhibits deal with the resurvey of lands in Wyoming's Powder River basin. As you know, the Powder River Basin in Wyoming is probably one of the most mineral-rich areas in the country at this point in time.

Attachment No. 1 shows township 53 north, range 69 west, in the Powder River basin as originally surveyed and as originally represented on BLM survey plat. This is the document they use, for example, to issue oil and gas leases.

If you look at attachment No. 2, that is how that same township and range look after the resurvey, and you will note there is absolutely no comparison between the two townships.

If you will look at attachment No. 3, Mr. Chairman, it represents the area in error between the original survey plat and the resurvey. And in section 16 you will note—if I may just have a couple more seconds to make a point—that is a school section owned by the State of Wyoming. Assuming that shaded area which occurs in section 16 now belongs to the Federal Government, and we had an oil well there, they can come in, bring suit against us, and obtain title to that oil well.

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[1] Retained in subcommittee files.

However, the shaded area in section 16, which is the boundary and should be the boundary of section 16, we will be unable to bring a quiet title action against the BLM.

So, they win in both situations and we're out in the cold. We respectfully request adoption and passage of 1617.

Thank you very much.

[The prepared statement of Mr. Schrinar follows:]

Testimony Before The
Subcommittee on Public Lands, Reserved Water, and Resource Conservation
# of the
Senate Committee on Energy and Natural Resources

in Support of
S. 1617
Presented by

Howard M. Schrinar, Wyoming Commissioner
of Public Lands
on Behalf of the State of Wyoming
and
The Western States Land Commissioners Association

SUMMARY OF TESTIMONY

The State of Wyoming and the Western States Land Commissioners Association firmly support S. 1617 which would eliminate application of the statute of limitations, as currently contained in the Federal Quiet Title Act, in situations involving title disputes between a sovereign state and the federal government. The legislation has been endorsed by the Association of Western Attorneys General, the National Association of Attorneys General, the Western States Land Commissioners Association, and the Interstate Oil Compact Commission. The bill recognizes the sanctity and importance of state sovereignty and its passage is essential to prudent and effective management of state lands; lands which are managed by the states for the benefit of all of their citizens.

The vast majority of lands owned by the western states were granted to those states upon their admission to the Union. The lands transferred to the states were mandated by Congress to be held in sacred trust by the states and administered in trust for those important public purposes for which the lands were transferred. However, given the current language of the Federal Quiet Title Act, as interpreted by the U. S. Supreme Court in Block v. North Dakota, the states will be precluded from fulfilling their sacred trust responsibilities. In addition, the vital interest of the states are endangered by potential arbitrary and unreasonable federal administrative action since the running of the statute of limitations begins when a state knew or should have known of the claim of the United States. Given the hundreds of thousands of federal actions which have been taken, and which could be viewed as giving notice to the states, the states will lose valuable property rights because of an inability to quiet title.

Introduction

The State of Wyoming and the Western States Land Commissioners Association firmly support passage of S. 1617 which would prohibit application of the statute of limitations to state title claims against the federal government. The bill is urgently needed to insure respect for, and protection of, state sovereignty. Without the statutory amendments proposed under S. 1617, important state land interests will be subject to defeasance as a result of potentially arbitrary or intentional action of federal administrative agencies. Such a result is completely contrary to the mandate of Congress when it transferred lands to the individual states upon their admission to the Union.

While there are many valid arguments which fully support the curative intent of S. 1617, Wyoming would call the attention of the Committee to three arguments which Wyoming feels are of paramount importance. First, the lands which were transferred to the individual states upon their admission constitute trust assets to which the states owe a sacred duty. The current statute of limitation provision under the Federal Quiet Title Act serves only to bar the states from fulfilling their Congressionally mandated trust responsibilities. Second, given the enormous job of administering millions of acres of trust lands scattered throughout the individual states, it is impossible for the states to protect themselves against the unreasonable notice provisions currently contained in the Federal Quiet Title Act. Third, the inability to quiet title in mineral and other resource producing states can serve only to discourage resource exploration and development. Such a result is not in the best interests of either the states or the federal government.

Sacred Trust Responsibilities of States

Upon admission to the Union, each of the western states were granted substantial amounts of land to be held in trust and administered for the benefit of various specified public institutions. While the vast majority of the lands were granted for the benefit of common schools, substantial acreages were also granted for the support of libraries, universities, health care facilities, and other important public service institutions. In reviewing the responsibilities which the states must fulfill in administering trust lands, the courts have been strident in their proclamations concerning such responsibilities. In ruling on the responsibilities that the State of Oklahoma bears toward its school trust lands, the Oklahoma Supreme Court recently noted:

> The School Lands Trust, administered by the Commissioners of the Land Office, for the State as Trustee, consists of certain lands and funds granted to the State of Oklahoma upon its admission into the Union by the Enabling Act. The gift of these lands and funds under the Enabling Act was accepted irrevocably by the people of Oklahoma, and such acceptance was set out in the Oklahoma Constitution under Article X, Section 1. These acceptance provisions of the Oklahoma Constitution and the Enabling Act constitute an irrevocable compact between the United States and Oklahoma, for the benefit of the common schools, which cannot be altered or abrogated. No disposition of such lands or funds can be made that conflict with the terms and purposes of the grant in the Enabling Act or the provisions of the Constitution relating to such land and funds. The State has an irrevocable duty as Trustee, to manage the trust estate for the exclusive benefit of the beneficiaries, and return full value from the use and disposition of the trust property. The express designation of the school lands and funds as a "sacred trust" has the effect of irrevocably incorporating into the Enabling Act, Oklahoma Constitution, and conditions of the grant, all of the rules of law and duties governing the administration of trusts. (emphasis added) Oklahoma Education Ass'n, Inc. v. Nigh et al., 642 P.2d 230 (Ok 1982) See also Lassen v. Arizona, 385 U. S. 458 (1967); Alaska v. University of Alaska, 624 P.2d 807 (Alaska 1981); County of Skamania v. Washington, 685 P.2d 576 (Wash. 1984); Kanaly v. State By and Through Janklow, 368 N.W.2d 819 (S.D. 1985); Department of State Lands v. Pettibone, 702 P.2d 948 (Mont. 1985)

The states' irrevocable sacred trust responsibilities as mandated by Congress and as interpreted by numerous courts, can only be defeated by the current provisions of the Federal Quiet Title Act. The statute of limitations currently contained in the Quiet Title Act can be used by federal administrative agencies to nullify the trust responsibilities expressly imposed by Congress on the individual states. Nowhere in the

Quiet Title Act or its legislative history did Congress manifest an intent to procedurally defeat the important substantive obligations which Congress itself had imposed upon the states. Such a result is, nevertheless, inevitable under the current Quiet Title Act provisions.

Magnitude of State Management Responsibilities

Under the current provisions of the Federal Quiet Title Act, a state must bring a quiet title action within twelve years after the state "knew or should have known" of the claim of the United States. Such a requirement is impossible to meet in those states which own substantial acreage. As originally passed by the Senate, the statute of limitations period under the Quiet Title Act began to run only after "actual knowledge" of the claim of the United States. However, the Department of Justice complained that "this provision . . . would put a substantial administrative burden upon the United States" and suggested instead "that the action be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." While it may have been burdensome for the United States to give actual notice of a federal claim, it is impossible for states to monitor the hundreds of thousands of federal activities which the Justice Department could argue the states should have known about for statute of limitations purposes.

A review of Wyoming's land ownership pattern, as well as that of the various federal agencies, clearly shows the impossibility of tracking every federal action that could affect the question of whether Wyoming should have known of a federal claim. (See attached Bureau of Land Management Map of Land Ownership in Wyoming.) Wyoming's total land is owned and administered according to the following approximate breakdown:

	Acres	% Ownership	
Total Area in Wyoming	62,664,960		100%
Owned by Wyoming	3,901,344		6%
Owned by United States:			
Bureau of Land Management	17,809,173	28%	
Forest Service	9,254,397	14%	
National Park Service	2,390,303	3%	
Bureau of Reclamation	408,334	1%	
Fish and Wildlife Service	49,463	-	
Department of Defense	15,995	-	
Bureau of Indian Affairs	1,296	-	
Other Federal Agencies	8,074	-	
Total Federal Acreage	29,937,035		47%
Other (including private and Indian)	28,826,581		47%

As a review of the attached map clearly shows, Wyoming state land is fragmented, is spread throughout the entire state, and is surrounded by or abuts federal land administered by numerous federal agencies. Given the interspersed nature of the state and federal lands in Wyoming, thousands of federal actions have been and continue to be taken which the Justice Department could argue meet the "should have known" criteria under the Federal Quiet Title Act. The following partial enumeration of federal actions potentially affecting state lands clearly demonstrates the impossibility of tracking and analyzing every federal action to determine whether it constitutes a federal claim which conflicts with potential state trust land rights.

Action	Numbers	Acres
1. Oil and Gas Leases	32,266	22,669,549
2. Coal, Geothermal, Phosphate, Sodium, and Other Leases	194	387,586
3. Mineral Patents Issued	2,723,904	12,265,083
4. Mining Claims Accepted for Recording	22,609	N/A
5. Grazing Leases in Effect	1,725	N/A
6. Grazing Permits in Effect	1,044	N/A
7. Rights-of-Way Grants (current)	998	2,449 miles
8. Other Miscellaneous Activities:		
a. Patents		
b. Land Exchanges		
c. Withdrawals		
d. Desert Land Entries		
e. Homestead Entries		
f. Special Land Use Permits		
g. Land Use Authorizations		
h. Recreation and Public Purpose Leases		
i. Timber Sales		
j. Free-Use Timber and Non-Timber Forest Products Permits		
k. Special, Competitive, and Private Recreation Permits		
l. Wilderness Study Areas		
m. Soil and Watershed Conservation Programs		

The State of Wyoming would have to employ at least one hundred additional staff members just to track the limitless number of federal actions which have been taken in the past, and will be taken in the future, which might constitute a claim of ownership by the United States. Such a burden is clearly extraordinary and imposes requirements of diligence which clearly cannot be met. In addition, such action would constitute waste of federal and state tax dollars with no measurable benefit to anyone.

Impact on Orderly Development of Mineral Resources

As the Supreme Court in Block v. North Dakota indicated, a quiet title action which is dismissed because of the statute of limitations provided under the Quiet Title Act does not resolve the question of who holds title to the property in dispute. The substantive question of title remains in limbo. Therefore, any dispute between a state and the federal government over ownership of particular land could go on ad infinitum without title being quieted in either the state or the federal government. Such a result will work to the detriment and injury of both the state and the United States.

Wyoming, like many other Western states, is very dependent upon its resource industries for financial support and economic development. However, the development and production of minerals and other resources would come to a rapid halt if energy companies could not safely determine who owned the resources in which the companies were interested. Therefore, if companies could not identify the true legal owners of the resources, those resources will not be developed. Such a situation can only result in lost revenues to the states and the federal government and defeat logical and efficient development of valuable resources owned by our governments.

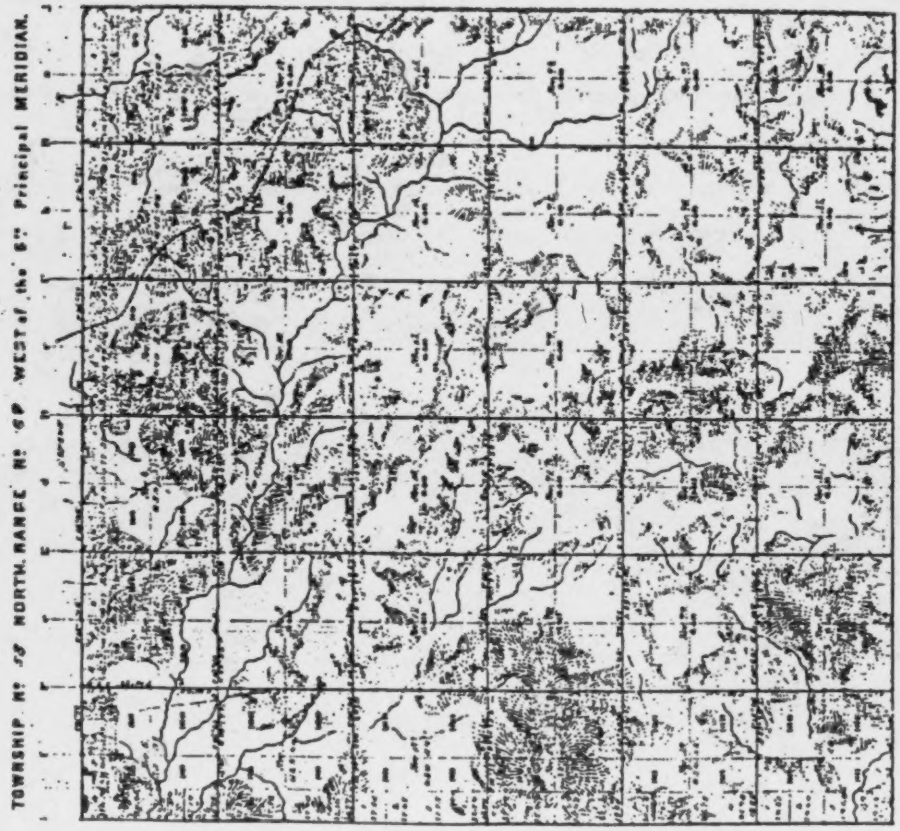
There is little question that application of the Federal Quiet Title Act to state trust lands could have major adverse consequences to the mineral interests of the State of Wyoming. By letter dated October 23, 1985, Secretary of the Interior Donald Hodel provided Governor Ed Herschler information concerning the need for substantial resurvey work in Wyoming's Powder River Basin. According to Secretary Hodel, 107 townships (2,465,000 acres) in the mineral rich Powder River Basin were in critical need of resurveying. The critical need for resurveying became apparent because of several factors including "increasing evidence of fraud by the original contract surveyors." Such resurveys are expected to significantly impact Wyoming's valuable mineral rights in the area.

According to Secretary Hodel, the Bureau of Land Management resurvey program "is designed to minimize the conflicts created by this situation. Inevitably, ownership conflicts exist which will have to be resolved--by agreement among landowners, **by quiet title suits**, etc." (emphasis added). Since the original surveys conducted in the 1870's and 1880's and the current resurveys are controlled and managed by federal agencies, it is patently unfair to punish Wyoming by barring it from quieting title to lands which rightfully and legally belong to the state. Yet, under the existing provisions of the Federal Quiet Title Act, Wyoming may be procedurally precluded from protecting its trust lands through a quiet title action even when the BLM admits that such action will be necessary to straighten out the survey problems in the Powder River Basin.

Attachments 1, 2, and 3 graphically show the impact that BLM's resurveys will have on ownership rights in the Powder River Basin. Attachment 1 depicts the original BLM survey plat of T53N, R69W in the Powder River Basin. Such plats have traditionally been used for issuance of mineral leases and other claims of ownership. Attachment 2 shows the same township after it was resurveyed. Attachment 3 shows that area of land which was erroneously included in certain land sections under the BLM's original survey plat. As Attachment 3 clearly shows, some of the survey lines have been moved by almost one-half of a mile. If the BLM's resurvey proves beneficial to BLM, they can sue Wyoming to quiet title to BLM's newly discovered land. However, in situations in which the resurvey indicates Wyoming is entitled to additional acreage, the Justice Department need only to raise the statute of limitations flag and Wyoming's valuable title rights could be procedurally defeated. Such an anomalous situation should not be continued.

Conclusion

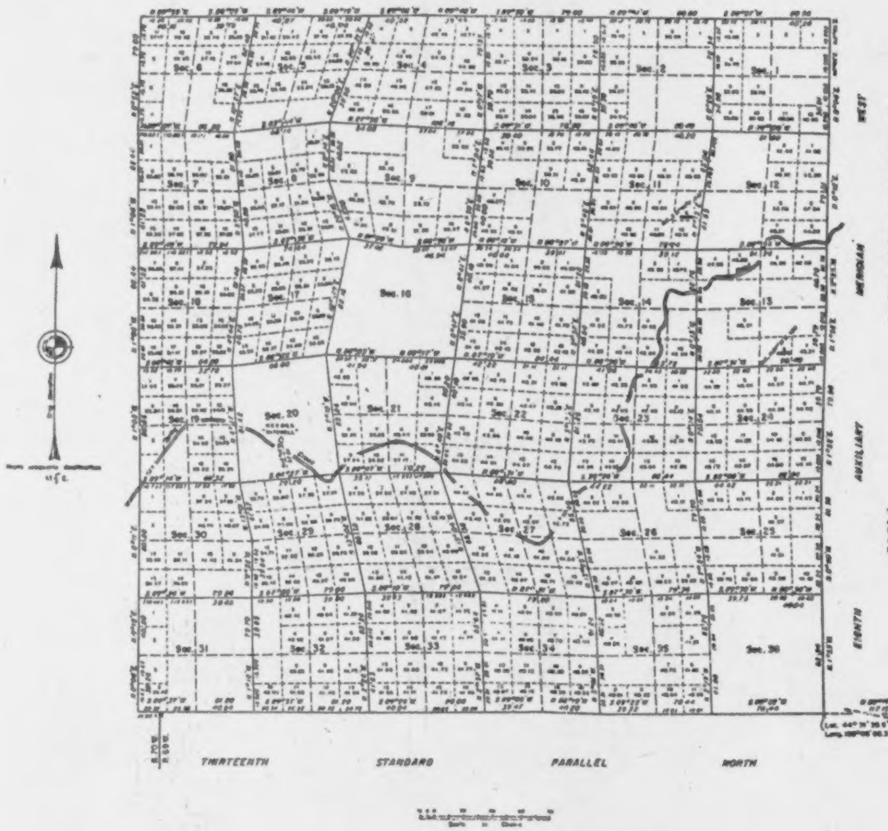
S. 1617 is desperately needed to correct the serious problems presented by the Supreme Court's interpretation of the Federal Quiet Title Act. The bill will allow the states to fulfill their sacred trust responsibilities, will protect the sovereign integrity crucial to state government, and will eliminate a potentially serious hurdle to proper resource development and production. In short, S. 1617 reflects good business sense and will lead to better government.


TOWNSHIP No 59 NORTH RANGE No 60 WEST of the 6th Principal MERIDIAN.

ATTACHMENT 1

TOWNSHIP 53 NORTH, RANGE 69 WEST, OF THE SIXTH PRINCIPAL MERIDIAN, WYOMING.

DEPENDENT RESURVEY


Sec. 1
Sec. 2
Sec. 3
Sec. 4
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Sec. 32
Sec. 33
Sec. 34
Sec. 35
Sec. 36
EIGHTH AUXILIARY MERIDIAN WEST
THIRTEENTH STANDARD PARALLEL NORTH
Scale in Chains

A history of surveys is contained in the field notes.

This plat represents the dependent resurvey of the Thirteenth Standard Parallel North, through R. 69 W., the Eighth Auxiliary Meridian West, through T. 53 N., between Rs. 68 and 69 W., the west and north boundaries and the subdivisional lines designed to restore the corners in their true original locations according to the best available evidence, T. 53 N., R. 69 W., Sixth Principal Meridian, Wyoming.

Certain modified lots and areas shown hereon pertain to Federal interest lands only. Except as indicated hereon, the lottings and areas are as shown on the plat approved July 6, 1883.

Survey executed by Anthony Wale', Cadastral Surveyor, beginning July 14, 1962, and completed November 3, 1964, pursuant to Special Instructions dated June 18, 1962, for Group No. 440, Wyoming.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Cheyenne, Wyoming May 24, 1965

This plat is strictly conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

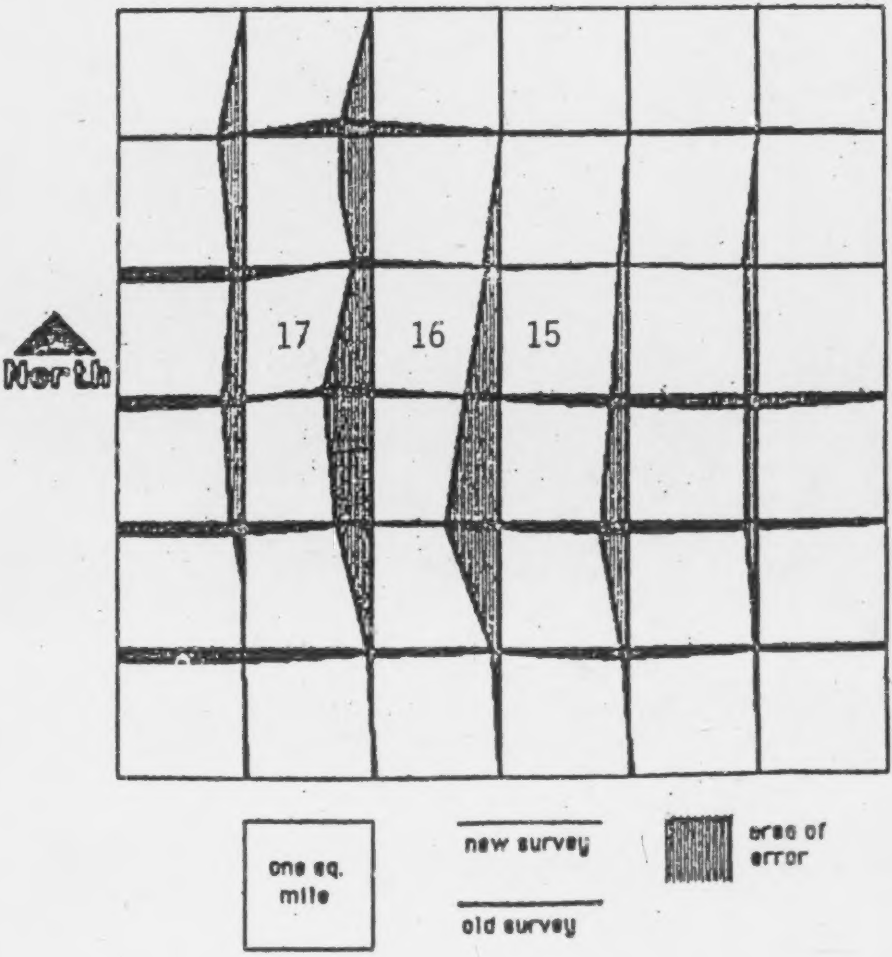
Richard L. Akin

Chief Cadastral Surveyor for Wyoming

ATTACHMENT 2

SURVEY WOES: Lease ownership turns up gray

Township 53 north, Range 69 west of the Sixth Principal Meridian, Wyoming


North
17
16
15
one sq. mile
new survey
old survey
area of error

ATTACHMENT 3

STATE OF WYOMING
OFFICE OF THE GOVERNOR
CHEYENNE 82002

ED HERSCHLER
GOVERNOR

March 3, 1986

The Honorable Malcolm Wallop, Chairman
Senate Subcommittee on Public Lands,
Reserved Water and Resource Conservation
Senate Committee on Energy and Natural Resouces
308 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

As you know, in 1983 the U.S. Supreme Court held in Block v. North Dakota that a land title claim asserted by a state against the federal government must be brought within the twelve year limitations period in the Quiet Title Act of 1972. The effect of this decision is to limit the time period during which the federal government consents to be sued by a state to resolve conflicting land claims. Passage of the twelve year period without a state claim does not, however, lay to rest the underlying title dispute. This has detrimental implications for both the states' and the federal government's ability to effectively administer public lands.

S.1617 would reverse that ruling by amending the Quiet Title Act of 1972 to declare the twelve year limitations period inapplicable to state claims. In 1984, the National Governors' Association endorsed enactment of this type of legislation. As governors of states with continuing land title conflicts with the federal government, we support repeal of the limitations period as it applies to states. This is consistent with the long estabished common law principle that a statute of limitations does not run against the sovereign states.

We recognize, however, that the Department of Justice has objected to a total repeal because of its concern that federal programs would be disrupted by continuing assertions of state claims. In response to the concerns which have been expressed, a compromise proposal has been developed. It is set out and explained in the enclosed February 7, 1986 letter from the Conference of Western Attorneys General to Attorney General Meese.

Legislation is clearly necessary to redress the problems created by Block v. North Dakota. While we would prefer to see a simple repeal of the limitations period as set out in S. 1617, we believe that the compromise discussed above adequately addresses the states' concerns and also responds to the problems with repeal of the limitations period that were identified by the Department of Justice.

This letter expresses not only my own views but also those of Governors Sheffield of Alaska, Evans of Idaho, Kerrey of Nebraska, Sinner of North Dakota, and Bangerter of Utah. We urge your committee to act quickly on this issue. Thank you for your consideration of our views.

Yours sincerely,

EH:nfs

Enclosure

cc: The Honorable Bill Sheffield
The Honorable John Evans
The Honorable Robert Kerrey
The Honorable George Sinner
The Honorable Norman Bangerter
Paul M. Cunningham, WGA Executive Director

CONFERENCE OF
WESTERN ATTORNEYS GENERAL
THE COUNCIL OF STATE GOVERNMENTS

720 SACRAMENTO STREET, SAN FRANCISCO, CALIFORNIA 94108 (415) 986-3760

EXPRESS MAIL

February 7, 1986

Honorable Edwin Meese, III
Attorney General of the United States
Department of Justice, Room 519
10th and Constitution Avenue, N.W.
Washington, DC 20530

Dear Attorney General Meese:

Throughout your career in the executive branch, you have expressed a consistent concern for the constitutional federal system, and respect for the states as sovereigns having independent powers and responsibilities. As Attorneys General of public land states, we are particularly appreciative of that concern. Now we ask your support in solving a problem that has been especially frustrating to healthy federal-state relations — the states' inability to resolve title disputes with the United States over sovereign and trust lands.

The United States holds a third of our nation's land — over half the territory of the western states. Many of these holdings are checkerboarded with private or state-owned parcels. Early surveys were often incomplete or inaccurate, raising questions of ownership and access. It is inevitable, under these circumstances, that controversies arise over the right and title of state and federal claimants. The orderly development of these lands depends upon effective resolution of such disputes. When the federal Quiet Title Act was passed in 1972, many of us felt that a mechanism for solving such title disputes had been created. The Act authorizes the federal district courts to adjudicate disputed titles. It was carefully designed to avoid disruption of federal programs by permitting the government to retain possession of disputed lands and to compensate claimants if their claim proves valid. Finally, to avoid litigation over stale claims, it incorporated a 12-year limitation on the time allowed for suit, commencing on the date a claimant knew or should have known of a federal claim.

Few states thought at that time that the Department of Justice would assert this limitation against sovereign states, and for a number of years it wisely did not. Even fewer thought that the U.S. Supreme Court would buy such an argument. Sound public policy is reflected in the traditional common law rule that statutes of limitations are inapplicable to sovereigns. Indeed, in its earliest decisions, the Supreme Court refused to apply such limitation periods to states, holding "[We] cannot, without committing a great injustice, apply to this case the rules as to time, which govern courts of equity; in suits between individuals." (Rhode Island v. Massachusetts (1839) 38 U.S. (13 Pet.) 23, 24.)

The claims which states may have against the federal government are not, by their nature, mere disputes over property. State lands, for the most part, consist of the beds of navigable waters which came to the original 13 states by virtue of the Revolution, and to states later admitted under the constitutional equal footing doctrine. States hold

Alaska • American Samoa • Arizona • California • Colorado • Guam • Hawaii • Idaho • Montana
Nevada • New Mexico • Northern Mariana Islands • North Dakota • Oregon • Utah • Washington • Wyoming

these lands as an incident of their sovereignty. Other lands — such as state school lands — were granted to the states in partial compensation for the retention by the United States of vast acreages of public lands. They are held in trust for the support of the public schools.

Nevertheless, in 1983 the Supreme Court acquiesced in the arguments of the United States in Block v. North Dakota (1983) 461 U.S. 273, and held that states as well as private claimants are the subject to the 12-year statute. However, the court made it clear the interposition of the statute did not remove the cloud over disputed title, but merely prevented its judicial resolution.

This rule — under which the United States is free to initiate quiet title litigation at will but states are precluded — is inconsistent with both sound consitutional principles of federalism and the practical administration of the public lands. Successful assertion of this limitation does not resolve conflicting claims. It does not prevent states and federal claimants from issuing leases, granting easements or otherwise attempting to assert ownership interests. It merely precludes orderly, judicial resolution of such conflicts on the merits.

Legislation which would reverse Block v. North Dakota ruling and give states the same opportunity as the federal government to have their title claims adjudicated is pending in Congress [H.R. 2484 and S. 1617.] It is supported by the National Governors Association, the National Conference of State Legislators, the National and Western Associations of Attorneys General, and the Western States Land Commissioners Association. However, continued opposition of the Justice Department has thrown a barrier in the way of its passage. We are aware of your department's concerns that federal land programs not be disrupted by the assertion of stale claims. We continue to believe that the better course of action is to exempt the states from the statute of limitations outright in order to avoid the necessity for states to file premature lawsuits out of their concerns over expiration of the limitation period. In a spirit of compromise, however, we suggest a possible alternative: that the statute of limitations be retained, but that the special interests and problems of the states be recognized by addition of a specific notice provision making clear what federal action is needed to start the statute running.

Litigation over the nature of federal claims necessary to put a state on fair notice has been extensive, and the results have varied widely among courts. For instance, the Department of Justice has contended that one state was put on notice of a federal claim on the date of its admission to the union. The Ninth Circuit has affirmed a holding that participation in a joint federal-state reclamation project in 1899 was sufficient to start the statute running. In contrast, other district courts have held that the notice required must be clear, unequivocal, and directed to the state agency chargeable with administration of state lands.

The requirement of express, unequivocal notice of a federal claim directed to the appropriate agencies would constitute a fair standard for the states.

At the same time, states should be given a three-year "window" in which to examine areas of potential dispute and bring any actions needed to resolve title disputes not previously adjudicated.

We are mindful of the concerns of your department and federal land managers, and we believe that these amendments represent a desirable balance between state and federal interests. In seeking this balance, we have attempted to address those concerns by incorporating notice proposals urged by Assistant Attorney General Henry Habicht during congressional hearings in June 1984. We believe that the proposed amendments would eliminate confusion now extant among the federal circuits as to what constitutes proper notice to the states, while at the same time recognizing the role of states in our federal union. Above all, the amendments would let both states and federal agencies proceed in the orderly planning, administration and development of the public lands.

This letter is written on behalf of the Conference of Western Attorneys General, which authorized the proposed amendment language in December 1985. This letter and the proposed amendment have been reviewed by the member Attorneys General in our conference. As of this date, Attorneys General Brown (AK), Van de Kamp (CA), Jones (ID), Greely (MT), McKay (NV), Spaeth (ND), and McClintock (WY) have specifically authorized me to add their endorsement. In addition, Attorney Steve Clark of Arkansas, who is not a member of our conference, has added his endorsement to this letter.

A draft of our proposed amendment is attached. We respectfully request your favorable consideration of our proposal, and look forward to discussing the issue further at the meetings of the National and Western Associations of Attorneys General on March 3-5 of this year.

Sincerely,

David Frohnmayer

David Frohnmayer
Oregon Attorney General
Chair, Conference of Western Attorneys General

DF:pws:AG20-41
Attachment: draft amendment to 28 USC 2409a (f)

cc: Honorable Senator Malcolm Wallop
Representative Howard Berman
Assistant Attorney General Henry Habicht
Interior Secretary Donald Hodel

Honorable Hal Brown (AK)
Honorable Leulumoega S. Lutu (AS)
Honorable Robert K. Corbin (AZ)
Honorable John K. Van de Kamp (CA)
Honorable Duane Woodard (CO)
Honorable Richard B. Opper (GU)
Honorable Corinne W. A. Watanabe (HI)
Honorable Jim Jones (ID)
Honorable Michael T. Greely (MT)
Honorable Brian McKay (NV)
Honorable Paul G. Bardacke (NM)
Honorable Nicholas Spaeth (ND)
Honorable Rexford Kosack (CM)
Honorable David L. Wilkinson (UT)
Honorable Kenneth O. Eikenberry (WA)
Honorable Arch G. McClintock (WY)

AMENDMENTS TO THE FEDERAL QUIET TITLE ACT

Subsection (f) of subsection 2409a of title 28, United States Code, is amended by inserting after "United States" the following:

> except that in cases in which the plaintiff is a state and interests in sovereign or trust lands are at issue, it shall be deemed to have accrued on the date that clear and unequivocal written notice of the claim of the United States is given to that state's governor, attorney general and agency charged with administration of state lands.

Subsection (f) is further amended by adding after the second sentence:

> Notwithstanding the above, any civil action under this section may be brought by a state within three years of the enactment of this act with respect to claims which have not previously been finally decided on the merits.

Senator WALLOP. An artful way of reducing the deficit. That is very graphic, Howard, and I appreciate it. Someone in the audience may be interested in taking a look at this other map that you brought. It is really and truly extraordinary.

I am not even certain that a computer listing with direct information of notice by the Federal Government, would be able to adequately take care of it. Of course, it could not take care of the resurvey problem anyway.

Mr. SCHRINAR. That's correct.

Senator WALLOP. So we will again, as I say, be very interested in the process of those negotiations.

Mr. Stevens.

STATEMENT OF JAN STEVENS, SUPERVISING DEPUTY ATTORNEY GENERAL, STATE OF CALIFORNIA

Mr. STEVENS. Thank you, Mr. Chairman. I'd like to reiterate our appreciation for your having scheduled this hearing and for the interest which you and the subcommittee have shown in this problem.

I would like to reiterate the concerns and observations made by Generals Jones and Spaeth and Commissioner Schrinar because they are certainly those which California shares and the attorneys general generally.

In the interest of time, I would like merely to hit on several points which were made by the Department of Justice in its testimony which caused me some problem.

First, it was suggested that the special bill might be the answer to disputes over land titles. And we believe that that's totally inappropriate because the very reason that this committee originally reported out a quiet title bill was in part, as I understand it, to avoid the necessity of having to hear a deluge of special bills and investigate the merits of these individual disputes.

This is something the courts are particularly suited to doing in most cases where they can't be worked out between parties, and we believe that that is where they should be resolved, if necessary.

The second point that Justice raised was that there is going to be a burden of litigation, floodgate raised. Well, General Jones had pointed out that in the first 6 years of the Quiet Title Act when everyone was under the impression that no statute of limitations applied to the States, there were all of three lawsuits filed in which States were parties.

It is only when the specter of the statute hangs over us that there is an incentive to file lawsuits to protect our rights. Land administrators, in our experience, are not particularly litigious. They would rather not litigate and their experience I'm afraid, has been that when matters are handed over to the litigation departments of their States, or Federal agencies for that matter, it's a whole lot harder to resolve the issue than it was before.

We believe that there is much likelier prospect of resolving disputes of the authority to litigate exists, but if there is no statutory period hanging over their heads to require them to file simply to preserve their rights and the rights of their people.

It would be our duty to advise them to file to protect the States rights in those cases in which there was a statute.

The third point was that Justice suggested they would have to look at many ancient records and that litigating these issues of land title would be extremely expensive. The problem is that their solution, the retention of the statute of limitations, requires us to litigate not the merits of a title dispute, but whether or not a State had notice of a Federal claim in ancient times.

We have spent just as many thousands of dollars and litigated over just as many months through the courts of appeal of the country, trying to determine what happened in 1899 or 1896 with respect to Utah with respect to notice. Of course, nothing has been really resolved because we still don't know who has the title.

This kind of litigation is particularly nonproductive and we suggest that the better government and the simpler manner to do it is to let us get to the merits in those cases where the merits ought to be decided.

Finally, we believe that BLM indicated a misapprehension with respect to the *Block* decision in its testimony. It seemed to believe that if the statutory period were successfully raised against a State, that this would ensure their ability to rely upon title to that land. And the one thing the Supreme Court made particularly clear was that it's decision had no effect whatsoever on the title to the land and that the underlying dispute would remain and be resolved only if the Federal Government could be provoked into suing the State or if Congress were to pass a special bill on the subject.

So from the standpoint of land management, I echo the feelings of our client, the California Lands Commission. This is a particularly bad kind of way to administer public lands, and we appreciate the Subcommittee's interest and concern in reaching a better solution.

[The prepared statement of Mr. Van de Kamp follows:]

AMENDMENT OF THE FEDERAL QUIET TITLE ACT

Summary of California Attorney General John K. Van de Kamp's Statement in Support of S. 1617

The U. S. Supreme Court held in Block v. North Dakota, 461 U.S. 273 (1983), that the 12-year statute of limitations applicable to quiet title actions against the federal government applies to suits brought by states as well as private parties. This holding has caused serious concern for the following reasons:

1. It jeopardizes the settlement of longstanding controversies between states and the federal government.

2. It runs contrary to the federal administration's announced desire to work with the states in a spirit of cooperative federalism.

3. It seriously jeopardizes the orderly administration of lands subject to title disputes between the states and the federal government. The Supreme Court's holding does nothing to resolve these often longstanding controversies. It merely presents a procedural block to their effective resolution. Consequently, lessees of disputed property who are in doubt as to their obligations may be subjected to duplicative claims to rent and royalties from both sovereigns.

4. It contravenes the long-accepted principle that statutes of limitations do not run against the claims of sovereigns, because the people's rights should not suffer by the inattention of governmental officials.

Nothing in the legislative history of the Federal Quiet Title Act indicates that the Congress contemplated the applicability of the statute of limitations to sovereign states as well as to private litigants.

Finally nothing in the 14-year history of the Federal Quiet Title Act indicates that an exemption for the claims of sovereign states would release a "flood of litigation" over stale claims.

An exemption from the statute of limitations for sovereign states for the claims of the states is necessary and desirable. Such legislation (in the form of S. 1617 and H.R. 2484) is supported by the National and Western associations of governors and state legislators, the attorneys general of 36 states, the National Association of Attorneys General, the Conference of Western Attorneys General, the Western State Land Commissioners Association, and the Interstate Oil Compact Commission.

STATEMENT OF CALIFORNIA ATTORNEY GENERAL JOHN K. VAN DE KAMP IN SUPPORT OF S. 1617

In the recent case of Block v. North Dakota (1983) 461 U.S. 273, the Supreme Court held that the 12-year statute of limitations in the Federal Quiet Title Act applied to the claims of sovereign states as well as those of private persons. As a result, a state is precluded from filing quiet title suits against the federal government if it "knew or should have known" of the claim for more than 12 years.

This decision has not resulted in the clarification of disputes over titles between the states and the federal government. On the contrary, it has exacerbated such controversies. It has hampered state and federal leasing programs and fostered a crazyquilt of judicial holdings on what comprises adequate nature of a federal claim. Finally it will, unless resolved by Congress, compel states to file literally hundreds of new cases within the next few years in order to avoid being barred by the statute.

The 12-year statute, incorporated in the Act at the request of the United States Department of Justice to forestall a "flood of litigation," received no apparent attention from states at the time the Act was passed and adopted in 1972. This inattention was perhaps understandable because under established principles of common law, statutes of repose will not bar the claim of a sovereign. A few years earlier, that same court had observed:

> "The Government, which holds its interests here as elsewhere in trust for all the people, is not deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act." (United States v. California (1947) 332 U.S. 19, 39-40.)

Application of the statute of limitations to claims of states is particularly inappropriate in light of the typical facts surrounding such claims. Each state holds the lands under its navigable waters (tide and submerged lands and navigable lakes and rivers) in trust for its people by virtue of the federal constitution, not by congressional grace. (Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co. (1977) 429 U.S. 363.) The 13 original colonies succeeded to the title of King George in such lands (Martin v. Waddell (1842) 41 U.S. (16 Pet.) 367), and under the equal footing doctrine, states admitted later acquired such lands on admission. (Pollard's Lessee v. Hagan (1845) 44 U.S. (3 How.) 212.)

Once quiet title suits became available under the 1972 Act, surprised states found not only that the federal government was asserting the statute as a bar in such suits but that it was contending that hapless states "knew or should have known" of the federal claim when they acquired such lands on statehood. Thus, Utah was told that it should have known of claims to Utah Lake when it became a state in 1896. California was told that an 1899 federal-state reclamation project on the Yuba River should have put it on notice of federal claims on that date. North Dakota, in the Block case, was charged that it had notice of the federal claim in 1955. Such notice in part, the United States claimed, came from Bureau of Land Management filings in neighboring Montana. The "Catch-22" in this argument is, of course, that even if a state knew or should have known of a federal claim at that time, suit would have been impossible because Congress did not waive sovereign immunity until its adoption of the Quiet Title Act of 1972.

The sovereign nature of lands underlying a state's navigable waters carries with it implications not discussed by the majority in Block. As 28 amici states pointed out, most controversies with the federal government over land involve the claims of private persons. In those infrequent but important cases in which a state sues to protect its sovereign title to the bed of a navigable water, the situation is far different. These lands were acquired by states as an incident of their sovereignty. (Pollard's Lessee v. Hagan, supra, 44 U.S. 212; State Land Board v. Corvallis Sand & Gravel Co., supra, 429 U.S. at 370.) Unlike federal lands, they are held in trust for the people within their borders. (Illinois Central Railroad Company v. Illinois (1892) 146 U.S. 387; Shively v. Bowlby (1893) 152 U.S. 1.)

In the Block case, the court made it clear that even though the United States may obtain a dismissal on statute of limitations grounds, the title dispute will remain unresolved. In such cases, Justice White observed:

> "Nothing prevents the claimant from continuing to assert his title, in hope of inducing the United States to file its own quiet title suit, in which the matter would finally be put to rest on its merits." (Id., 75 L.Ed. at 856-857.)

Thus, notwithstanding the decision of two lower federal courts that the Little Missouri River was navigable, the State of North Dakota was precluded from obtaining any determination of this question on the merits.

The court's conclusion, contrary to the states' widespread assumptions and a number of district court decisions, raises a dilemma for the orderly regulation and development of lands. If, as Justice White observed, underlying title disputes remain unresolved, the states' only alternative will be to provoke the federal government into suing by demanding rents and royalties from federal lessees and generally conducting acts inconsistent with federal ownership.

Both the Conference of Western Attorneys General and the National Association of Attorneys General, immediately recognizing the problem, called for ameliorative legislation. They have been joined by the National Governors Association, the National and Western Conferences of State Legislators, the Conference of Western States Land Commissioners, and other groups with an interest in the orderly development of public lands. The Block decision upset the federal balance by precluding resolution of vital public land issues on the merits. The court recognized the problems that its decision would cause, and invited a legislative solution. Senator Wallop's S. 1617 would restore the balance by giving the states the same standing now enjoyed by the federal government to seek judicial resolution of title disputes. Federalism is not a one-way street. We respectfully urge favorable consideration of S. 1617.

Senator **Wallop**. Well, again, I thank you all and again urge you to keep the subcommittee informed of your progress because this subcommittee, I think this full committee, and certainly this Senator, are more than interested in relieving what is increasingly an unnecessary burden on everyone. And I think you quite correctly pointed out, Mr. Stevens, it is probably going to end up with just as much grievance for them as they forecast, perhaps even more by leaving it unattended.

So keep us informed. We do have ways of attempting to move things and, absent any progress, I think we will do that.

I appreciate it very much. Thank you.

Now, I am going to call all the remaining witnesses in as one panel and call on them in the order in which they come up. On S. 1568, Mr. Lawrence Astor from Reno, NV, and Mr. Wayne Sampson from Reno, NV.

On S. 1911, Mr. Don Wolkins from Salt Lake City; on S. 2031, Mayor Edward Watson of Lake Charles; and on S. 1888, Mr. Roger Powers, accompanied by Ms. Gere McCall.

Mr. Astor, again, I would tell you all that your entire statements will be put in the record. Would you please indulge me enough to try to summarize them? The committee is only permitted to sit for another 4 minutes. I will fudge it some, but I cannot go too far.

STATEMENT OF LAWRENCE ASTOR, CHAIRMAN, RENO SPARKS INDIAN COLONY

Mr. **Astor**. My name is Lawrence Astor. I am the chairman of the Reno Sparks Tribal Council, and accompanying me today is Wayne Sampson. He is the natural resource planner for the tribe, and also Vincent Lacelli, who is consultant to the tribe.

Anyway, we are here today to testify briefly in support of S. 1568. The bill would place in trust some lands for the Reno Sparks Indian Colony.

Our purpose today is to convey the need of our tribe to secure sufficient land so that we can continue to build an economic base and to achieve our goals of economic and social self-sufficiency.

The Reno Sparks Indian Colony is 29.3 acres of land acquired by the Federal Government in 1917, and also we purchased 1 acre in 1984. We are an IRA tribe. We also have a corporate charter that was issued and submitted to the Secretary in 1983.

The colony land, when purchased, was rural in character and location, situated between the cities of Reno and Sparks. It is presently in the center of a major industrial district. The MGM Grand is located near us. The land is fully utilized as a residential area.

We have 133 HUD individual homes. These homes are occupied by descendants of the Washoe, Paiute, and Shoshone Tribes. The population of the colony is presently 626, and the lands were originally designed to serve some 200 people. That's an increase of 313 percent. We have a density of 22 persons per acre.

The lands we seek through passage of S. 1568 would allow the tribe to prosper through economic development, alleviate the overcrowded conditions, and provide generations to come with adequate housing.

S. 1568 culminates 16 years of land search for the colony. The tribal council foresees a land that will enhance the economic development endeavors of the tribe to decrease Federal funding dependency. A land that will revive lost heritage values, a land that will ensure our children's children a secure base in which to raise families in harmony with nature, and a land that once served our forefathers as a tool for survival will serve us also.

We have several amendments to the bill. Section 1(b) would be amended to read: "The lands referred to in subsection (a) comprise approximately 1,949.39 acres of public land within Hungry Valley, Washoe County, Nevada."

Section 1(b) would be amended to include township 19 north, range 20 east, Mount Diablo baseline and meridian, section 7, lots 13 through 18, lock D, Granata, Cafferata subdivision, 1.002 acres more or less, reservations, restrictions, and conditions.

Senator WALLOP. Mr. Astor, we can take those detailed amendments out of your statement. The whole statement will be in the record, and I very much appreciate that.

I realize what curtailing does to a trip that long, but I did want to get everybody else who has come an opportunity to testify.

[The prepared statement of Mr. Astor follows:]

UNITED STATES SENATE

ENERGY AND NATURAL RESOURCES COMMITTEE

PUBLIC LANDS, RESERVED WATER & RESOURCE CONSERVATION SUBCOMMITTEE

STATEMENT

BY

LAWRENCE ASTOR

CHAIRMAN

RENO SPARKS INDIAN COLONY

ON

S. 1568

TO TRANSFER LAND IN TRUST FOR
RENO SPARKS INDIAN COLONY

Mr. Chairman:

My name is Lawrence Astor, Chairman of the Reno-Sparks Indian Colony Council of Nevada. Accompanying me today is Francis Dressler, Vice President, and Wayne Sampson, Natural Resources Planner for the Tribe and Vincent P. Lachelli, consultant to our Tribe.

We thank you for the opportunity to appear in support of S. 1568.

Under the Indian Appropriation Act of 1916, the Reno-Sparks Indian Colony was established for "the purpose of procuring homes and farm sites with adequate water rights and providing agricultural equipment and supplies for non-reservation Indians in the state of Nevada." In 1917, Congress appropriated $6,000.00 for the purchase of a 20 acre tract to establish the Reno-Sparks Indian Colony. A subsequent purchase of 8.38 acres for the amount of $4,300.00 in 1927 brought total acreage to 28.38.

Analysis of congressional intent at the time was to provide a secure place for "homeless Indians" while removing them from the "progress" or development of the Reno area. The years between 1916 and 1934 reflect the changes in federal administrative policy, from one of protection and supervision of Indians to that of self-governing communities. During this period agency superintendents came and went and federal support to the Colony was minimal.

In 1934, the Indian Reorganization Act was passed. This piece of legislation proposed that any group of Indians residing together that adopted a constitution and by-laws and held a democratic election would be granted corporate status as a federally recognized tribe. This meant that the Reno-Sparks Indian Colony would be formally organized under a constitution and by-laws initiated by aboriginals residing in the Truckee Meadows area.

The adult residents of the Reno-Sparks Indian Colony voted 53-5 to adopt the Indian Reorganization Act of 1934 and, subsequently, 51-1 to adopt a Constitution and By-laws in 1936.

The ensuing years can be viewed as a period of major transition from traditional societies and lifestyles of the Washoe, Paiute and Shoshone people, who migrated according to seasons and custom to a settled community, and grew to accept its corporate and governmental responsibilities and opportunities as defined by the federal government and community wishes.

Originally set aside for 200 persons; colony population has continued to grow for the last decade. The Census Bureau in the early 20's and 30's predicted that given the health status of Indians in Nevada, there would be no more Indians left in Nevada by 1980; we, here today, are proof that some predictions can be wrong. The improved health status, as well as the standard of living, have fostered a flourshing community. Population growth has long been a factor in the social pressures that have plagued the Colony.

Our Colony was quite small in number, as we were dispersed throughout our ancestral lands. Since then our population has grown many times. We have used this meager 28.38 acres of land in the most efficient and practical manner possible. From it we have provided housing, community services, and a limited economic base.

The present 28.38 acres can no longer provide space for our needed housing and community services. There remains no room for economic growth or development. This inadequate land base has severely curtailed the ability of the Colony to achieve its self imposed goals of social and economic self-sufficiency and a desire to reduce our reliance on federal support.

The accelerated deterioration of our family, culture, and spiritual values and traditions which the members have embraced for countless years is equally distressing to all tribal members. This deterioration is caused primarily by the inability of our Colony members to maintain family units within the reservation due to the lack of land.

The Reno Sparks Indian Colony desires to achieve social and economic self-sufficiency through its own economic initiatives. We want to provide a land base for our members in which we can perpetuate family, cultural and spiritual values.

For the past sixteen years we have sought advice and searched for additional lands which would satisfy our needs and be congenial with our neighbors. In 1981, we purchased 160 acres of land in what is known as the Lemmon Valley area. The purpose of the acquisition was to accommodate the ever increasing need for family housing. However, the subject lands are located under what is known as the Reno International Air Race which is an annual event held each September. We were advised that any construction of residential units would necessitate either the cancellation or relocation of this very important event.

After considerable consultation with county representatives and members of the Reno International Air Race Commission it was determined that the construction of such housing would severely jeopardize the continuance of the air races. As a result of this determination, the Reno Sparks Indian Colony Council elected to pursue lands elsewhere that would not adversely impact this very important and economically beneficial event.

After extensive study, consultation and research, lands within the Hungry Valley area, near Reno, were identified. The Bureau of Land Management and the Bureau of Indian Affairs have greatly assisted us in determining that these lands would represent the least impact on our neighbors and be the most appropriate in meeting our current and future needs and goals.

In arriving at the present site selection, there was controversy with the Lemmon Valley residents over the first site selected. To relieve the situation another site was selected in consultation with a variety of agencies. Again a planning document regarding the proposed development was developed. In short summary, the key issues previously providing controversy have been satisfactorily addressed.

1. Access - Tribal Council investigated alternative access into Hungry Valley; the route chosen is a jeep trail leading off State Route 445. Utilization of the road would eliminate traffic through Lemmon Valley.
2. Water - The Tribal Council was granted a permit from the Nevada State Water Resources to drill a water well test hole in Section A. Geologists have determined that Hungry Valley and Lemmon Valley have separate aquifers (water basins). Water tests have proven out to be of sufficient quality and quantity.
3. Schools - Our children will not be attending present Lemmon Valley Schools.
4. Police and Fire Facilities

The Tribal Council will utilize its present policy force to patrol and enforce laws on the proposed site. The Tribal Council, in the past has contracted with the Truckee Meadows Fire Department for fire protection services. The Tribal Council has met with Truckee Meadows and they have agreed to provide training to tribal members to initiate a volunteer fire department.

5. Building Codes - Reno Sparks Indian Colony have always utilized Washoe County building codes and will do so in the future.

Additionally, we have concluded and finalized agreements of compensation for the loss of grazing rights in the area, ensuring that the rights of all parties are protected.

We feel that we have considered the breadth and scope of everyone's interests to arrive at a plan and design that serve the needs of all concerned. A copy of that plan is attached as are letters of support.

Please note that at the conclusion of all concerns satisfactorily addressed, it was publicly stated by the Lemmon Valley Advisory Board that based upon our track record it is perceived that, "the Indians would be the best stewards of these lands."

The need for this land and its interrelated uses by the Colony have been well documented. Our Colony stands little chance of success in achieving its self-mandated goals of economic and social self-sufficiency or to preserve its culture without an adequate land base. We wish to become an integral part of our community, to contribute to its growth, to work and participate in its planning. We have demonstrated this in the past and will continue to do so in the future.

Our members represent one of the oldest native American groups in the United States. Our people have occupied the Southwest area for more than 1,000 years. At one time our members occupied all of northern Nevada, eastern California, southern Idaho and western Utah. Today we occupy only 28.38 acres. The proposed withdraw is situated in the Truckee Meadows area and is part of the Great Basin Region. The Truckee Meadows area was once totally inhabited by aboriginals of the area.

The attributes of the Truckee Meadows perpetually inhabited by the three Great Basin Tribes dictated many elements of their way of life. Primarily due to environmental factors, Great Basin Tribes were considered semi-nomadic people. These semi-nomadic people followed the cycles of the seasons by relocating from one camp site to another, depending on the time of year, since no single food source could be found in any given area.

Western Nevada (Truckee Meadows) Tribes obtained their food supplies by using three different methods: gathering, fishing, and hunting. For aboriginals in the Truckee Meadows, fishing was one of the main sources of food in the spring; this time of year also allowed for various tribal bands to socially interact with one another. Providing for food, clothing, and shelter in the Truckee Meadows meant that tribal bands had to move from one site to another depending on need. The Truckee Meadows area was an ideal site to meet aboriginal needs. Indians lived together in what could be called or termed bands. Most often a band of aboriginals consisted of a limited number of families and or relationships. These bands were self-sufficient and fairly independent from one another in following the cycles of the season. Basin Plateau people were simple hunters, fishers, and gatherers with a sparse and scattered population.

Archaeological studies conducted in the Truckee Meadows area have been rich in cultural findings. Numerous artifacts currently exhibited at the Nevada State Museum, Nevada Historical Society and private displays, views the aboriginals as an important linkage to the past regarding Nevada history. This area and many others are very sacred to us. Our forefathers treked there to receive spiritual strength and reinforcement. This is the land from which our fathers and their fathers grew and gathered foods and sustenance such as corn, squash, melons and berries. It is the same land upon which our fathers and their fathers, many hundreds of years ago, traded with the Spanish from Mexico and California and later (100 years ago) with the Mormons and others from the north and east.

The lands which are included in this proposed transfer are intended for the use of our people to enable us to establish an urgently needed land base for housing as well as an economic base. This will represent the beginning of our diminishment of our reliance upon the Federal government, in order that we may become economically and socially self-sufficient and to enable us to begin to contribute to our community. The housing which we will develop will allow our people to retain and recover spiritual and traditional values which we have lost as a result of the dispersal of our families. Only in recent years has our tribe been able to gain such things as running water, sewer facilities, and electricity for our people.

For hundreds of years we have worked in harmony with our neighbors. This is the way of the Paiute, Washoe and Shoshone. We wish to continue and to enhance this relationship for it is only in harmony that man can prosper and continue to coexist.

S. 1568 will provide the opportunity to reach these goals.- We have fully demonstrated our determination to achieve these goals and to diminish our reliance on government support by the efficient utilization of our existing 28.38 acres.

The Reno Sparks Indian Colony of Nevada is fully aware of federal reductions in grant and contract dollars. The lands designated in S.1568 will provide us with an ability to expand and develop businesses which will generate substantial revenues to fill the existing and projected gaps in federal funding.

The Tribe has prepared and developed a land use and development plan for this particular land. The projected development will result in measurable economic and social gains for the state, county and city, as a direct result of spin-off businesses and employment opportunities outside the reservation.

Early discussions with the Nevada congressional delegation have indicated that the Reno Sparks Indian Colony would be required to meet several conditions. These include contacting Nevada state officials, near-by city officials, small community wards, county planning officials, and adjacent land owners to discuss the purpose of S. 1568 and the intended use of the lands involved.

All interested parties, including the Bureau of Indian Affairs, the Bureau of Land Management, state of Nevada, Washoe county, the cities of Reno and Sparks and many neighbors, as well as Senators Paul Laxalt and Chic Hecht, and Representatives Barbara Vucanovich and Harry Reid have been provided copies of the Land Development Plan and have reviewed the proposed legislation. All have approved the land transfer.

Enactment of S. 1568 is particularly urgent. Since the introduction of this bill in the 99th Congress, it was learned that the 28.38 acre parcel of land now occupied by our Tribe is not held in Trust by our Tribe but is simply owned by the United States. All of our homes, programs, and the status of the 28.38 acre parcel are in jeopardy. We need a quick resolution of our precarious dilemma which can be accomplished by the enactment of S. 1568.

The Bureau of Indian Affairs has known for many years, decades in fact, that the Reno-Sparks Indian Colony needs more land in order to become economically self-sufficient and to alleviate the continuous overcrowding of its members. The Bureau of Indian Affairs has learned from a variety of internal and external sources that our Tribe has searched the area in and around Reno/Sparks for land that would be suitable for our social and economic needs. The Bureau of Indian Affairs has assisted in the search and has provided advice and counsel in the selection of suitable land and the plans for its development.

Past administrations and the congresses have encouraged Indians to become self-sufficient, yet the bureaucracy has frustrated their efforts at every turn during the past decades. It is little wonder that Indians despair of our treatment by the bureaucracy. Every "deferment" in the past has resulted in dropping the project except for "continuing studies or investigations" by the bureaucracy. Our dreams and plans have been deferred to death while the bureaucracy continues to thrive.

Mr. Chairman, our Tribe intends to utilize all of its Tribal resources to accomplish its Tribal goals and cooperate with its neighbors. As the Land Use and Development Plan indicates, the Bureau of Indian Affairs' funds represent only one of many sources of potential funding for the overall economic and social goals of the Tribe. The Reno-Sparks Indian Colony intends to provide, to the maximum extent possible, resources and monies of the Tribe to attain these goals.

It is impossible for our Tribe, in its current financial straits to reacquire this acreage by purchase. Hundreds of years ago, we owned and occupied this very land and thousands of square miles around it. This land is part of our sacred aboriginal lands. It would be a shameful outrage for the government to extract money from the poorest of the poor for the transfer of vacant, unused land from government agency to another, in Trust, for the sole use of the Reno-Sparks Indian Colony. Intended transfer is not a fee purchase or sale. All estimates of "value" are based upon comparable transfers and values recently concluded. At present, the only use is for winter grazing. The Reno Sparks Indian Colony intends to make something of this vacant desert land as did our fathers and their fathers. If there is to be any potential use of projected value, it will be developed by the Reno-Sparks Indian Colony. In decades of outright exclusive possession by the government, there has been minimal use with an associated minimal value.

The spector of the Federal Land Management Policy is again raised without basis or merit. This transfer is not the kind intended to require payment of a fair market value. This transfer is quite different from the case where the government purchased land for good value, used the land for a temporary purpose, declared it surplus, and then decided to sell it to another commercial owner. In such case, a " fair price" would be rightly expected by buyers, sellers, and taxpayers. But Federal Land Management Policy was never intended to apply in cases where the government acquired the land for nothing, had no use for it, and could return in Trust for the beneficial use (only) of the original owners. The application for the Federal

Land Management Policy to this transfer would embarrass the Administration and the Congress. We do not believe the President would veto this bill.

The Reno-Sparks Indian Colony have demonstrated that they are ambitious, progressive, and successful in their economic enterprises upon the meager 28.38 acres now available to them. The evidence, substantiated by the materials submitted for the record, indicates that additional land is urgently needed to enable the Reno Sparks Indian Colony to reassemble our tribal families in one area, to maintain our traditional cultural and spiritual values, and to permit us to develop an economic base sufficient to support ourselves.

The Reno-Sparks Indian Colony have accomplished as much as anyone could ever expect upon a limited 28.38 acres. Indian tribes are suffering tragically high unemployment (as much as 70%, perhaps the highest of any group of American citizens); we are no exception to this dilemma. With a landbase, we can continue to produce jobs for ourselves and others and obtain economic self-sufficiency and a high possibility of revenues to the State as a result of new business. Without land, we are strapped and frustrated and our ancient tribal bonds are being eroded.

A detail economic development and land use plan is included in our prepared statement (see copy attached). It is ambitious but quite reasonable; it is the product of long study and expert counsel. It is fully compatible with the long range plans of our neighbors and all affected governments.

We believe our objectives for this land are compatible with policies and promises of the Congress and the Administration -- such is the encouragement of social and cultural identity, economic self-sufficiency and reduction of unemployment among Native Americans.

Reno/Sparks and other affected municipalities are aware of the water conditions on this land. We have worked with them and will continue to do so. Our water needs, for use and conservation, are mutual. Permits have been approved and issued to our tribe for water use by the State of Nevada.

There is no conflict with the Burton-Santini legislation. The State of Nevada was specifically notified of the selection of this parcel and it has voiced no objection. The Washoe County Department of Comprehensive Planning was contacted to identify any potential conflicts; none existed. We have and will continue to cooperate with local school officials and provide any land necessary for any school needed to serve children in the entire neighborhood.

The land transfer is explicitly subject to all existing rights-of-way, water and minerals. No valid right will be prejudiced by the proposed transfers.

We can only rely on the Congress. We respectfully request immediate passage of S.1568.

The intensive planning process undertaken by the Reno-Sparks Indian Colony in conjunction with the demonstrated success and wise use of its current land has resulted in a proposed set of land uses which will improve and accelerate tribal social and economic conditions, provide an environment conducive to family, cultural and traditional values and be an asset to the people of the State of Nevada.

We ask your favorable consideration and recommendation for enactment of S.1568, and we thank you.

DESCRIPTION OF PROPOSED LAND USE PLAN

The Reno-Sparks Indian Colony proposes and requests the withdraw from the Bureau of Land Management, to put and held in Trust by the Bureau of Indian Affairs, on behalf of the Reno-Sparks Indian Colony, the following described land 'situated in Washoe County, Nevada.

Township 21 north, range 20 east, Mount Diablo baseline and meridian, section 4, 640 acres more or less, reservations, restrictions, and conditions, if any, rights-of-way and assessors either of record or actually existing on said premises.

Township 21 north, range 20 east, Mount Diablo baseline and meridian, section 9, 640 acres more or less, reservations, restrictions, and conditions, if any, rights-of-way and assessors either of record or actually existing on said premises.

Township 21 north, range 20 east, Mount Diablo baseline and meridian, section 16, 640 acres more or less, reservations, restrictions, and conditions, if any, rights-of-way and assessors either of record or actually existing on said premises.

LAND USE PLAN

The subject land requested by the Reno-Sparks Indian Colony is literally an isolated, vacant, semi-desert area. The land remains as it has for the past several thousand years. With the exception of very minimal grazing, neither federal, state, or local community governments have made productive use of it. The Reno-Sparks Indian Colony intends to develop this land not only for our Tribe, but for the community as a whole.

Based on optimistic, existing development trends in the general Reno/Sparks area, the subject land would not be developed for at least another fifteen to twenty-five years, if then. We plan to put this land to immediate use instead of allowing it to sit without benefit to anyone for the next fifteen to twenty-five years. We not only possess the desire, but we believe we also possess the needed capability to make the land productive for the benefit of the whole community.

We are the first to realize that a great deal of financial resources will be required in the desired development. However, we feel that considerable financial resources can be obtained from sources other than the federal government. A strong working, and cooperative relationship with local and state government will permit the necessary infrastructure and related financial requirements that will perpetuate the needed and programmed growth. In addition, we strongly believe that, given the proper incentives and necessary environment, the private sector can and will play a major role in the overall development of the subject lands.

Four specific uses of the additional land, to be added to the reservation as a result of the legislation are as follows:

A. Housing

o To provide necessary lands to tribal members for independent and privately financed housing.

Several employed members of the Tribe are in need of housing; however, no land is available for this purpose within the existing reservation. These individuals wish to retain their identity as Paiutes, Washoes, and Shoshones by remaining on the Reno-Sparks

Indian Colony reservation. The additional land base that is requested will ensure the cohesiveness and continuance of that identity. The sources of possible funding for this private housing are as follows:

-- Private
-- Bureau of Indian Affairs (Credit Program)
-- Veterans Administration
-- Conventional lending
-- Farmers Home Administration (Loan Programs)
-- Federal Housing Administration (Loan Programs)

o To provide specific tracks of land for the construction of public and related housing for Tribal members.

Many of the unemployed and low-income tribal families cannot bear the cost of privately owned housing, yet the need for such housing continues to exist. With the requested land base, public housing will become available and will present the opportunity for these families to move out of substandard housing which they currently occupy both on and off the Reservation. Possible sources of funding for public housing are as follows:

-- Housing and Urban Development
-- Other federal housing subsidized programs
-- Tribal funds (when available)

B. Business Development

o Establish an industrial park for clean and non-water intensive light manufacturing and industry.

Several private sector businesses have approached the Reno-Sparks Indian Colony to discuss the possibility of establishing a business through joint venture or sole proprietorship by the Tribe. To date they include a graphics company, a playground equipment company, and preliminary discussions with an electronic assembly manufacturer. In all discussions the need for an adequate land base to facilitate the proposed businesses has significantly delayed or curtailed further discussions. Possible sources of funding for these businesses are as follows:

-- Private sector (proposed joint/sole businesses)
-- Small Business Administration
-- Bureau of Indian Affairs (Credit Programs)
-- Housing and Urban Development (Block Grants)

-- Lending Institutions
-- Tribal funds, (limited, when available)
-- Bureau of Indian Affairs (Economic Development grants)
-- Farmers Home Administration

o Establish several business site leases for private Indian business entrepreneurs.

There is need to provide business site leases to the individually qualified members of our Tribe. Many of our members have proven capability and education to enter and establish their own "cottage industries"; however, the absence of a sufficient land base precludes this opportunity. Principal sources of funding for these individual entrepreneurs are as follows:

-- Private sector (Franchises)
-- Small Business Administration
-- Bureau of Indian Affairs (Credit Program)
-- Lending institutions
-- Individual loans

C. Recreation and Tourism

It is the intent and committment of the Reno-Sparks Indian Colony to make available limited lands for the creation of public recreational areas. However, the use of the subject areas will not be limited to Tribal members only. The Tribe believes, as it has stated to the surrounding communities, that this goal is part of a cooperative community effort. The recreational areas will be open to all members of the community.

Although specific sources of funding required for this open space and recreation area have not been identified, it is envisioned that limited financial resources will be required. And, that an extensive cooperative approach with state, county, and local government will occur and subsequently preserve and guarantee the intended perpetuation of the open space and recreation plans.

D. Community Facilities

The Reno-Sparks Indian Colony plans to construct a primary community service center which will provide several levels of services to its members. Some of these services will consist of job placement and referral, social service programs, community support services, and other related community efforts. In addition, it is the intention of the Tribe to construct fire protection facilities which will work cooperatively with surrounding community fire protection forces. It is the attitude of the Reno-Sparks Indian Colony that these facilities and services within their capabilities and jurisdictions shall be available to all community members when needed.

The Reno-Sparks Indian Colony firmly believes that it must do all that it can to support and promote the Washoe County school district's Educational mission. We are prepared to make available any lands necessary for the construction of school facilities that will facilitate the education of our community's children.

RICHARD H. BRYAN
Governor

STATE OF NEVADA
INDIAN COMMISSION
472 Galletti Way
Sparks, Nevada 89431
(702) 789-0347

ELWOOD MOSE
Executive Director

12 June 1985

The Honorable Chic Hecht
United States Senator
302 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Hecht:

The Nevada Indian Commission is pleased to support the Reno-Sparks Indian Tribe's effort to secure some 5,120 acres of BLM land in Hungry Valley for the improvement of the Tribe's social and economic well-being and welfare.

We have watched the Tribe undertake, with a commendable spirit and willingness, difficult enterprises requiring substantial human and other forms of tribal investment. The Reno-Sparks Tribe has brought considerable benefit to its members in areas such as housing, municipal services, police protection, and small business operations. These achievements are remarkable in that the Tribe's land holdings consist of only 28.87 acres within the City of Reno; and the on and near reservation population is dense at 721 persons.

The Tribe's plans for the proposed land acquisition are far-sighted and should be a beacon to those Indians who seek progress to follow the Reno-Sparks Tribe's lead in relying upon itself and its members' abilities to raise the living standards of tribal residents and to contribute to the general well-being and prosperity of the surrounding community.

We respectfully urge you to seek and pursue the legislation necessary for the Tribe to acquire its desired lands.

Truly,
NEVADA INDIAN COMMISSION

ELWOOD MOSE

dr

JIM KING
CHAIRMAN
WASHOE COUNTY COMMISSION

1205 Mill Street
P.O. Box 11130
Reno, Nevada 89520
Phone: Reno Bus. 785-5454
Incline Village Bus. 831-6100
Res. 831-1732

June 24, 1985

Senator Chic Hecht
302 Hart Building
Suite 14
Washington, D.C. 20510

Dear Senator Hecht:

This is to restate our support for the Reno/Sparks Indian Colony's application for withdrawal of 5,120 acres of land in Hungry Valley, Washoe County, to be held in trust for the use and benefit of the Colony.

The proposed development has been thoroughly reviewed and discussed and represents a positive approach to this community's future. I, as a community representative, recognize the ability and sincerity of the Tribe in preserving the integrity of the land. We feel they will look out for our mutual interests in years to come.

We urge your expeditious action on this matter.

Sincerely,

Jim King

Jim King, Chairman
Washoe County Commission

JK:pd

WASHOE COUNTY
"To Protect and To Serve"

OFFICE OF THE COUNTY MANAGER

1205 MILL STREET
POST OFFICE BOX 11130
RENO, NEVADA 89520 — 0027
PHONE (702) 785-4175

June 24, 1985

The Honorable Chic Hecht
Senator From Nevada
302 Hart Building, Suite 14
Washington, D.C. 20510

Dear ~~Senator Hecht~~: Chic

This is to indicate our support for the Reno/Sparks Indian Colony's application for withdrawal of 5,120 acres of land in Hungry Valley, Washoe County, to be held in trust for the use and benefit of the Colony.

The proposed development has been thoroughly reviewed and discussed and represents a positive approach to our community's future. As a community leader, I recognize the ability and sincerity of the Tribe to preserve the integrity of the land, and feel they will look out for our interests in years to come.

I urge your prompt action on this matter.

Sincerely,

John

John MacIntyre
Washoe County Manager

JK:pd
cc: Bill Farr

City of Reno

POST OFFICE BOX 1900 • RENO, NEVADA 89505 • (702) 785-2020

October 30, 1985

Dear Nevada Congressional Delegation:

This is to reafirm my support for the Reno/Sparks Indian Colony proposal to withdraw nineteen hundred and twenty acres of BLM land located in Hungry Valley, Washoe County, Nevada.

I believe that the Tribe will make a substantial contribution to housing in the community. This will improve the standard of living of several hundred Nevada residents.

I hope you vote in favor of the proposed legislation.

Thank you for your support.

Sincerely,

Peter J. Sferrazza
Mayor City of Reno

RSIC
[illegible] support

April 19, 1985

The Honorable Chic Hecht
United States Senator
Room 302, Suite 14
Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Hecht:

This is to renew my support of the concept of the Hungry Valley land withdrawal by the Reno-Sparks Indian Colony, as expressed in my letter to you of August 28, 1984.

I do have a remaining question about the size of the withdrawal request, but support the idea, with the mitigation reviewed by the Washoe County Commission.

Sincerely,

/s/ Jim
JAMES L. SPOO
Mayor

356-2311 Mayor Office
786-5040 Lawyers Office

cc: Lawrence Astor, Chairman
Reno-Sparks Tribal Council

APR 23 1985
RENO - SPARKS
INDIAN COLONY

June 20, 1985

Mr. Lawrence Astor, Chairman
Reno/Sparks Indian Colony
98 Colony Road
Reno, Nevada 89502

Dear Mr. Astor:

This is to state our support for the Reno/Sparks Indian Colony's application for withdrawal of 5120 acres of land in Hungry Valley, Washoe County, Nevada to be held in trust for the use and benefit of the Colony.

The proposed development represents a positive approuch to this community's future. We recognise the ability of the Tribe in preserving the integrity of the land and feel they will look out for our mutual interests in the future.

We look forward to working with you as neighbors.

Sincerely,

Dorothy M. Chapin, President
Palomino Valley Homeowners Association
5800 Quaking Aspen Rd.
Reno, Nevada 89510

SPANISH SPRINGS VALLEY RANCHES
PROPERTY OWNER'S ASSOCIATION
P. O. Box 1274
Sparks, Nevada 89431

April 5, 1984

Commissioner Belie Williams
Chairman
Washoe County Board of County Commissioners
1205 Mill Street
Reno, Nevada

Dear Commissioner Williams:

In response to your request for a polling of the Spanish Springs Valley Ranches Property Owner's Association board members as to their feelings regarding the relocation of the Reno-Sparks Tribal Council's housing to 160 acres in Hungry Valley and the subsequent use of the Pyramid Lake Highway, I am pleased to report that there was unaminous approval.

There was concern expressed regarding the overall traffic picture on the highway since there are so many total developments on line and it was hoped that this subject would be addressed at some future Commissioner's meeting.

Some of the board members were particularly impressed and pleased by the spirt of co-operation with which the Tribal Council has approached the diverse entities. Their actions are to be commended. If the same attitude governs the rest of the undertaking their community will be most welcomed neighbors.

Respectfully yours,

Gerald Rowland
President
Spanish Springs Property
Owner's Association

NATIONAL CHAMPIONSHIP AIR RACES
RENO, NEVADA
Mail: P. O. Box 1429 • Reno, Nevada 89505
Phone: 826-7500

June 7, 1985

The Honorable Paul Laxalt
United States Senate
Room 323A
Russell Office Building
Washington, D.C. 20510

Dear Paul:

Subsequent to our meeting in Washington, I called a meeting between myself, Thornton Audrain, Ed Houston, John McIntyre, Manager of Washoe County, and Shane Del Cohen of the Indian Tribal Council. As I indicated to you at our meeting, there were rumors flying around that the Indians wanted to renege on their agreement with us and lease us their land to fly over during the Air Races. This rumor turned out to be completely unfounded and Shane Del Cohen showed me a copy of the agreement which was executed on the 26th of June 1984.

As you will notice, this agreement is a legal document signed by Belie Williams, Chairman of the Washoe County Board of Commissioners and by the representative of the Indian Colony. The copy of this agreement was allegedly sent to your office by Shane Del Cohen on the 27th of June 1984. As you indicated to me at our meeting you had received nothing in the form of an agreement or otherwise.

If you will look closely on the copy, there is a seal of Washoe County under Judi Bailey's name and the seal of the Reno Sparks Indian Colony under the tribal representative's name. These seals do not copy well so they are hard to discern unless one looks very closely.

I am taking the liberty of having George Vucanovich deliver this agreement to you personally. I sincerely hope this meets the requirements of the Federal Government so that the land exchange can be handled as expeditiously as possible.

I personally want to thank you for allowing me to visit with you and explain our situation to you. I sincerely hope that this document will clear the air and that the land exchange will be handled as expeditiously as possible.

Sincerely yours,

Sil Petricciani

SP/cc

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
CARSON CITY DISTRICT OFFICE
1050 E. William St., Suite 335
Carson City, Nevada 89701

IN REPLY REFER TO:
2300
(NV-036)

JUL 18 1985

Ms. Shayne Del Cohen
Reno-Sparks Indian Colony
98 Colony Road
Reno, Nevada 89502

Dear Ms. Del Cohen:

In response to Mr. Vincent Lachelli's letter of July 1, 1985, we are providing you with the following information specific to public lands in Township 21 North, Range 20 East, sections 4, 9 and 16:

Grazing - The grazing permittee in this area is
Intermountain Land & Livestock
c/o Robert Marshall
201 W. Liberty St.
Reno, Nevada 89501.
Grazing preference on the above-mentioned lands is based on 15 acres/animal unit month (AUM) or 128 AUMs.

Rights-of-Way - None of record

Mining claims - None of record

For information pertaining to water rights you should contact the Water Resource Division State Engineer. We also suggest that you contact the Bureau of Indian Affairs or a private appraiser to determine the market value of the lands.

If we can be of further assistance, please contact Jo Ann Hufnagle, Realty Specialist, or me, at (702) 882-1631.

Sincerely yours,

James M. Phillips

James M. Phillips
Area Manager
Lahontan Resource Area

cc: Vincent P. Lachelli
Government Relations

Resolution 85-RS-21

RESOLUTION
OF THE
RENO-SPARKS TRIBAL COUNCIL

A RESOLUTION TO RESCIND RESOLUTION NO. 84-RS-02

WHEREAS, the Tribal Council of the Reno-Sparks Indian Colony is organized pursuant to the provisions of the Reorganization Act of June 18, 1934 (48 Stat. 984), as amended, to provide certain rights of home rules and be responsible for the general welfare of its membership; and

WHEREAS, the Reno-Sparks Indian Colony comprising 28.38 acres was acquired by the Federal Government pursuant to authority contained in the Acts of May 18, 1916 (39 Stat. 23.143) and May 10, 1926 (44 Stat. 496); and

WHEREAS, Colony lands, divided into assignments, are fully utilized as a residential area; and

WHEREAS, the Colony's land base is inadequate to meet the housing and economic development needs of the Tribal members; and

WHEREAS, in order to meet those aforementioned needs, acquisition of additonal lands is essential.

NOW THEREFORE BE IT RESOLVED, that the Tribal Council of the Reno-Sparks Indian Colony hereby requests the Nevada Congressional Delegation to introduce appropriate legislation to convey certain lands within Washoe County, Nevada, to the Reno-Sparks Indian Colony.

BE IT FURTHER RESOLVED, that the Bureau of Indian Affairs provide full assistance and cooperation to help this request succeed, and that the Bureau of Indian Affairs begin preparing the necessary background reports, recommendations and assessments required for legislation.

BE IT FURTHER RESOLVED, that the Tribal Council of the Reno-Sparks Indian Colony hereby request that certain vacant and unappropriated public domain lands located in Washoe County, Nevada, be withdrawn from the Bureau of Land Management and be added to and made part of the Reno-Sparks Indian Colony, to be held in trust by the United States of America for the benefit and use of the Reno-Sparks Indian Colony.

Township 21 North, Range 20 East, Mount Diablo Meridian, Nevada, Sections 4, 9, and 16 containing 1,920 acres more or less.

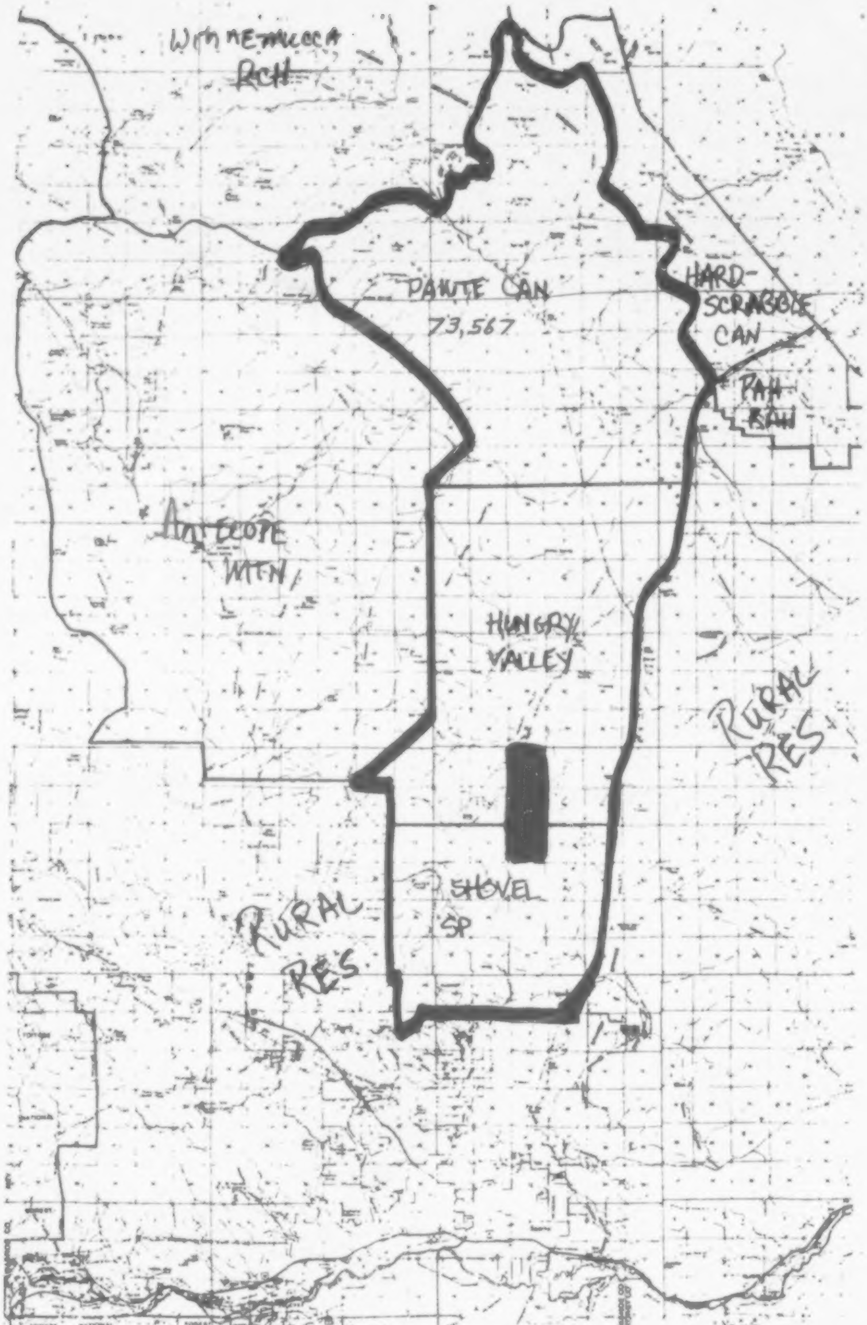
Together with all the improvements thereon and the appurtenances there unto belonging.

CERTIFICATION

I, the undersigned, Secretary of the Reno-Sparks Tribal Council, hereby certify that the Tribal Council is composed of seven (7) members of whom six (6) constituting a quorum were present at a duly called meeting which was convened and held on the seventh day of August 1985 and that the foreging resolution was duly adopted by a vote of six (6) for and zero (0) against, pursuant to authority contained in Article IV, Section I (g) of the constitution and By-Laws of the Reno-Sparks Indian Colony.

Verna J. Brown

Verna J. Brown, Secretary
Reno-Sparks Tribal Council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Senator **Wallop**. Mr. Sampson.

STATEMENT OF WAYNE SAMPSON, NATURAL RESOURCES PLANNER, RENO SPARKS INDIAN COLONY

Mr. **Sampson**. I'd like to thank, first of all, Senators Hecht and Laxault and the rest of the Nevada delegation on their efforts in supporting this land bill.

The primary purpose of the land bill is to develop a residential community for persons of the Reno Sparks Indian Colony.

As demonstrated in past developments by the Indian colony, careful land management planning for the Hungry Valley has occurred. Long- and short-term goals have been established for Hungry Valley with the overall objective of developing 160 units over the next 10 years. Additional plan developments for the Hungry Valley are agriculture, community centers, recreation, small shops, a cemetery, a church, off-road recreation use, tree farm, and other agriculture.

Unmet housing needs in the colony have become a major problem. The 28 acres purchased for the colony in 1917 and 1927 are no longer adequate for the population of Reno Sparks Indian Colony.

Now we have arrived at the point where there is no room for further development at the present colony. Limited land space and housing units have caused colony residents to relocate off the colony. Multifamily residences resulting in overcrowding are clearly visible. Due to limited land space, our final housing project was completed in October 1985 and 70 applicants qualified for just six units. The acquisition of the Hungry Valley lands are essential.

For the Hungry Valley area the Reno Sparks Tribal Council will adopt land use codes and ordinances to provide planned land management policies. These policies will be monitored and enforced by the Reno Sparks Tribal Council and enforced by the Reno Sparks Tribal Council and its court system.

Open space will separate housing areas and provide space for individual septic systems. The long-term plan is to develop a complete waste sewage system for the housing development. The solid waste derived from the project will be disposed of by the colony's own solid waste management program currently in effect in the present colony.

Water control and management for Hungry Valley will be provided by Reno Sparks Indian Colony. The water will be developed in section 4 and use the Warm Springs hydrographic water basin.

Recently conducted water studies have determined the water quality and quantity to be of sufficient amount. The water well, complete with water meters, will enable the colony to provide water control.

The colony will be establishing a wildlife management program to ensure that all listed threatened or endangered wildlife and plants are not adversely affected by the development. This program will reserve quality forage, cover, water and space for a sufficient number of existing species to survive.

An expanded environmental impact study will be conducted to ensure that historic landmarks and artifacts will be preserved and protected by the colony.

In closing, I would like to again add that the Reno Sparks Indian Colony is a growing and expanding community. With the acquisition of additional lands, the colony can continue to develop a viable community in Nevada. The proposed project gives new hope for members who currently have no lot assignments. They want a chance to become homeowners and remain part of the Reno Sparks Indian Colony.

Past developments by the colony have proven that we are capable of obtaining goals in a timely and orderly fashion.

Thank you.

[The prepared statement of Mr. Sampson follows:]

Oral Statement of Wayne Sampson, on S.1568, a bill "to declare that the United States holds certain lands in trust for the Reno-Sparks Indian Colony"

Members of Congress:

My name is Wayne Sampson and I am here on behalf of the Reno Sparks Indian Colony to discuss the land Bill, S.1568. The primary purpose of the land bill is to develop a residential community for persons of the Reno-Sparks Indian Colony.

As demonstrated in past developments by Reno-Sparks Indian Colony, careful land management planning for the Hungry Valley area has occurred. To assist the Colony with planning, a technical planning firm, Design Concepts West, has been retained. Long and short-term goals have been established with the overall objective of developing 160 housing units over the next ten years. Additional planned developments for Hungry Valley include: community center, cemetery, recreation facility, church, agriculture, off-road recreation use, tree farm, and other community projects.

We will be developing Section 4 into one-third acre lots. Sections 9 and 16 will provide access to Section 4 via highway 445.

Housing needs on the Colony have become a major problem. The 28 acres are no longer adequate for the people of the Reno-Sparks Indian Colony. Since 1917, population growth on the Colony has been increasing at a steady rate. According to the Bureau of Indian Affairs' 1983 census there are 623 persons residing on the Reno-Sparks Indian Colony. Now we have arrived at the point where there is no room for further development at the present Colony. Limited land space and housing units have caused many Colony residents to relocate off the Colony. Multi-family residences resulting in over crowding are visible. For the Reno-Sparks Indian Colony to continue to grow, acquiring the Hungry Valley land is essential. Due to limited land space, our final housing project was completed in October 1985 and seventy applicants qualified for just six units.

For the Hungry Valley area the Tribal Council will adopt land use codes and ordinances to provide planned land management policies. These policies will be monitored and enforced by the Reno-Sparks Tribal Council and its court system.

In acquiring the three sections of land in Hungry Valley, we will be utilizing every effort to conserve energy. Plans now call for homes to be of passive solar design and earth integrated.

Open space will separate housing areas and provide space for individual septic systems. The long-term plan is to develop a complete waste recharge system for the housing development. Solid waste derived from the project will be disposed of by the Colony's own solid waste management program.

Water control and management for Hungry Valley will be provided by Reno-Sparks Indian Colony; the water will be developed in Section 4 and use the Warm Springs hydrographic basin.

Long-term planning allows for the development of small shops to serve the community in Hungry Valley. Space has been provided in Section 4 for these enterprises. Also, the long-term plan is to accelerate economic development in Section 9 and 16 with light clean industry.

The Colony will be establishing a wildlife management program to ensure that all listed threatened or endangered wildlife and plants are not affected by the development. This program will reserve quality forage, cover, water and space for sufficient numbers of existing species to survive.

In closing, I would like to, again, refer to the fact that the Reno-Sparks Indian Colony is a growing and expanding community. With the acquisition of additional lands, the Colony will continue to develop a viable community in Nevada. This gives new hope for members who currently have no lot assignments. They want the chance to become home owners and remain part of the colony. The adoption of S.1568 will allow us native Americans to strive toward the ultimate goal of economic self-sufficiency. Past developments by the Colony have proven that it is capable of obtaining goals in a timely and orderly fashion. Thank you.

Senator WALLOP. Thank you, Mr. Sampson. I appreciate your trip here to inform us of the colony's view.

[The prepared statements of Ms. Dressler and Ms. Leman follow:]

Oral Statement of Francis Dressler, on S. 1568, a bill "to declare that the United States holds certain lands in trust for the Reno-Sparks Indian Colony"

Mr. Chairman and Committee Members:

My name is Francis Dressler, Vice-Chairman of the Reno-Sparks Tribal Council, Washoe [illegible]nty, Nevada.

As Chairman Astor has [illegible]ated, our present site is fully developed to the extent that we cannot expand our housing needs or realize full potential for economic development.

We have done an extensive survey of available federal lands in the Reno area. Our first efforts through the Recreation and Public Purposes Act were unsuccessful. In identifying a site near Lemmon Valley, Nevada residents from this area raised various issues which may effect their quality of living. These are:

1. Inadequate Water Supply - Same Basin as Lemmon Valley The State Water Engineer has determined the hydrological basins of Hungry Valley and Lemmon Valley as being separate and distinct. A test-well permit has also been received from the State Water Engineer. We have proven the availability of water as of October 1985.

2. Access - The present street system in Lemmon Valley cannot safely accommodate additional traffic from our proposed development. The Tribal Council investigated

alternate access routes into Hungry Valley from State Highway 445 and decided that access could be obtained from this route. However, it should be noted that the industrial development and 1000 units of housing already, approved for the North Valley area, will have an affect on Lemmon Valley roads regardless of tribal activity.

3. Overcrowded Schools - Due to the small amount of Colony persons that will initially occupy homes on the proposed site, the impact on Lemmon Valley Schools would be minimal. However, the concern of Lemmon Valley residents regarding overcrowded school conditions has caused the Tribal Council to make plans to transport school children to other local schools. The Spanish Springs development of 6000 units has school development phased in.

4. Inadequate Police and Fire Protection - Utilizing Tribal police and agreements with Washoe County we feel this area would be adequately patrolled and protected.

5. Substandard Construction of Homes - Reno-Sparks Indian Colony has always utilized Washoe County codes and will continue to do so.

Additionally, we have compensated for the loss of grazing rights in the area, ensuring the rights of all parties concerned.

On mitigating these issues the Tribal Council agreed to move the proposed development several miles further east.

We feel we have considered the issues and scope of everyone's interests to arrive at a plan and design that will serve the needs of all concerned.

Additionally, I would like to point out that our plan has been reviewed by and has received the support of the Washoe County Commissioners, Lemmon Valley Advisory Board, Palomino Valley Home Owners' Association, Northeast Valley Advisory Board, and the cities of Reno and Sparks.

Statement of Becky Lemon, on S.1568, a bill "to declare that the United States holds certain lands in trust for the Reno-Sparks Indian Colony."

Mr. Chairman and Committee Members:

My name is Becky Lemon. I am submitting testimony before Congress for three reasons:

1. I represent some community leaders from Lemmon Valley, Nevada, who actively support the Reno-Sparks Indian Colony's expansion into nearby Hungry Valley.

2. Secondly, I will not tolerate racism. A vocal few individuals in my beautiful desert valley continue to wear the devil head of prejudice. The rest of us are not bigoted, uncooperative red necks - an image I would like to dispel. Racism is intolerable whether it involves thousands or millions like Selma, Watts, Nazi Germany, South Africa or a handful of hundreds in Nevada. Yet, it happens even in a state with a land mass of 110,540 square miles and a population only expected to reach its first million this year.

3. And finally, I wish to thank the Nevada Congressional delegation: Senators Chic Hecht and Paul Laxalt and Congressmen Barbara Vucanovich and Harry Reid for their statesmanlike efforts in finding an equitable solution to an embarrassing problem.

I ask that my testimony, copies of the community leader's letters and area residents sent to the Nevada Congressional delegation in 1985, be entered into the Congressional Record. I would like to highlight a few of the points.

First, I have personally experienced the racial opposition. I have also performed extensive research to confirm that all concerns have been resolved.

My involvement began in March 1985, when a Colony delegation came to the Lemmon Valley Citizens Advisory Board to explain the proposed withdrawal of 5000+ acres in Hungry Valley which is not in the Lemmon Valley Planning area.

but they wanted us to know what they planned. Spokesman Tom Dressler, tribal vice chairman, stated the Colony would use only a small portion for 160 clustered, earth-integrated, solar houses. The rest of the land would be kept in a natural state. Colony children would attend Sparks schools, access would be from Spanish Springs and water would be pumped from the Warm Springs, not the Lemmon Valley hydrographic basin.

I still don't quite know what else the delegation would have said because they weren't allowed to finish their presentation. One person, between obscenities, spewed he did not want 625 Colony children in "his" school. (Note: only 625 people currently reside in the Colony.) Another individual shouted to Dressler, a Vietnam veteran, "Why can't you be good Americans like us?"

The Colony delegation was repeatedly accused of lying and questioned in a belligerent, red-faced manner. I do not remember Dressler often being allowed to finish a statement or an answer to a question. I was appalled, embarrassed and felt the injustice.

Since that night, I have researched the charges made. The only lies I discovered in my extensive research were told by opponents. Previous problems raised had been resolved.

The vocal few also refuse to accept the bill now before you as a different proposal for a different site than the Tribe made in 1982.

Those vocal few cited overcrowding on Lemmon Valley roads and in schools, non-conformity to the north valleys master plan and water concerns as reasons they did not want the Colony's housing development in Lemmon Valley. Inexplicably, those same reasons were being cited for Hungry Valley just before the bills were introd~~uced in 1~~985.

At the House committee hearing, the vocal few presented a petition allegedly (there are some discrepancies) signed by almost 500 people residing in all of northern Nevada - that's less than .2 percent or .002.

There were no petitions circulated, however, opposing 1000 new homes and a printing company, which could employ up to 1000 people, approved for Stead, which is closer to Lemmon Valley on the west than Hungry Valley on the east. Lemmon Valley and Stead children alike attend O'Brien Middle School which will bear the brunt of the 1000 new homes.

The vocal few also did not circulate a petition opposing the 7000+ acre Reno Ranch resort proposed for Peavine Mountain. According to hydrologists, the Colony's well is not in the Lemmon Valley hydrographic basin, but part of the Reno Ranch resort is and could affect the watershed which replenishes the aquifers, water-poor Lemmon Valley's only source of water. Nor was there a petition condemning the gold mine recently approved for Hungry Valley or the 700+ unit housing development endorsed by the North Valleys Citizens Advisory Board in October 1985.

At least some of the people who signed the petition were told Indian children would attend Lemmon Valley school and access would be on Lemmon Valley roads. I thought such reasoning died with Orville Faubus in Little Rock in the fifties. Are all the positive steps taken toward equality in the past 30 years going to disappear in the unpopulous high desert of Nevada?

Those of us supporting the legislation realize, too, the Indians will be environmentally much better neighbors. The Hungry Valley site is approximately nine miles from my front door, the approved homes around five miles and the established Indian Colony approximately 10 miles. In northern Nevada, air pollution blows west to east. In short, there is no economic or socially sound basis to the opposition and most of us realize it. Some, in fact, see certain benefits. At a later meeting of the Lemmon Valley Citizens' Advisory Baord, a property owner in Hungry Valley said he'd welcome the Indians because they'd stop the dumping of trash and old refrigerators, clean up the valley and help him maintain the roads other people tore up.

Some opponents have cited the so-called land swap inequity. The Tribe currently owns 160+ acres in north Lemmon Valley which they bought in 1980 for

$175,000 of non-federal monies - a simple transaction compared to an act of Congress. However, that 160 acres is under the unlimited course of the Reno Air Races, the biggest, most profitable tourist event in an area boasting tourism as its main industry. If one house is built under air race courses, the event will die. The Colony, therefore, began looking for other land. They had searched for about ten years prior to 1980 and knew their options were limited.

One of the vocal few in testimony before the House committee stated the matter shouldn't be before Congress because it involved two private corporations - the Reno-Sparks Indian Colony and Reno National Air Race Committee, apparently implying tax monies shouldn't be used. Yet neither she nor any of the vocal few even attended a Jan. 9, 1986, Washoe County Airport Authority meeting when the Authority voted to spend $1.2 million of county money to purchase 600 acres of land from a developer to help secure the Air Races.

In my written testimony, I also have data demonstrating the cash value of the 160 acres the Tribe purchased near the Air Races is comparable to that of the 1900 acres in Hungry Valley and that the land the Indians request will have a minimal effect on recreation in such a huge valley.

Lastly, the resolution of grazing rights further demonstrates the Reno-Sparks Indian Colony will be excellent neighbors. I use the term "neighbors" loosely. Hungry Valley and Lemmon Valley are only indirectly connected. I tried to drive my Wagoneer to the Hungry Valley housing site from Lemmon Valley. I couldn't.

In closing, I would once again like to thank Senators Laxalt and Hecht, Congressmen Vucanovich and Reid for the equitable compromise represented in S1568 in which they rose above dirty racist squabbles to statesmanship.

Thank you.

October 31, 1985

Congressman Barbara Vucanovich
Senator Paul Laxalt
Senator Chic Hecht
United States Congress
Washington, D.C.

As immediate Past President and current Vice President of the Lemmon Valley P.T.A., I support the bills now before Congress in which the Reno-Sparks Indian Colony seeks to withdraw over 1900 acres of land for a housing development.

Sincerely,

Gayle Bryant

Gayle Bryant
Vice President
Lemmon Valley P.T.A.

October 31, 1985

Congressman Barbara Vucanovich
Senator Paul Laxalt
Senator Chic Hecht
United States Congress
Washington, D.C.

As Secretary of the Lemmon Valley P.T.A. I support the bills now before Congress which would allow the Reno-Sparks Indian Colony to withdraw over 1900 acres of land for housing purposes in Hungry Valley, Nevada.

Sincerely,

Donna Selin

Donna Selin
Secretary
Lemmon Valley P.T.A.

LEMMON VALLEY CITIZENS' ADVISORY BOARD

POST OFFICE BOX [illegible]
LEMMON VALLEY, NV [illegible]

Oct. 20. 19

The Honourable Barbara Vucanovich,
Paul Laxalt and Chic Hecht:

I would like to express my approval of the proposed bill, H.R 3212, granting the Indian Colony of Reno 1900 plus acres in Hungry Valley. I feel that they will handle the land much better than possible future developers there.

As a member of Lemmon Valley Citizens Advisory Board I approve of this proposal and would appreciate your expediting bills.

Sincerely,

(Mrs) Jane C. Maxey
Senior Citizen Representative

LEMMON VALLEY CITIZENS' ADVISORY BOARD

POST OFFICE BOX 60296
LEMMON VALLEY, NV 89506

October 20, 1985

The House and the Senate
The Congress of the United States
  of America
Washington, D.C.

To the House and Senate [illegible]mmittees considering the Bills which would allow the Reno-Sparks Indian Colony, to Withdraw over 1900 acres of land in Hungry Valley, Nevada:

I, Jim Balough, Chairman of the Lemmon Valley Citizens' Advisory Board, fully support the Reno-Sparks Indian Colony's proposal to withdraw over 1900 acres of land in Hungry Valley for a housing development and the bills now before Congress which would allow for such withdrawal. The bills introduced by Senators Paul Laxalt and Chic Hecht in the Senate and Congressman Barbara Vucanovich in the House are an excellent solution, a compromise, to a sticky problem which involved separating honest concerns from racial prejudice.

I also commend the Nevada Congressional Delegation for their statesmanlike efforts.

Sincerely,

Jim Balough
Chairman

(Please read the above into the Congressional Record.)

October 20, 1985

The House and the Senate
The Congress of the United States
  of America
Washington, D.C.

To the House and Senate Committees considering the Bills which would allow the Reno-Sparks Indian Colony to Withdraw over 1900 acres of land in Hungry Valley, Nevada:

I, Linda Welter, Lemmon Valley Homeowner and Lemmon Valley representative on the North Valleys Citizens Advisory Board, fully support the bills introduced by Senators Paul Laxalt and Chic Hecht in the Senate and Congreeman Barbara Vucanovich in the House which would allow the Reno-Sparks Indian Colony to withdraw more than 1900 acres of land in Hungry Valley for housing purposes. I believe the Indians would be excellent caretakers of the land and good neighbors.

When the Colony first came before Lemmon Valley in 1982, they offered to share their water with our water-poor area. I would like to once again explore the possibility with them in the spirit of being good neighbors.

I would also like to thank the Nevada Congressional Delegation for their statesmanlike efforts in solving a sticky problem and coming up with an equitable compromise solution.

Sincerely,

Linda Welter

Linda Welter

(Please read the above into the Congressional Record.)

Senator WALLOP. Mr. Wolkins.

STATEMENT OF DONALD W. WOLKINS, DIRECTOR, REAL ESTATE OPERATIONS, UPLAND INDUSTRIES CORP., SALT LAKE CITY, UT, AS PRESENTED BY CHARLES PECK, ASSISTANT DIRECTOR

Mr. PECK. Mr. Chairman, my name is Charles Peck. I am the assistant director for real estate operations in Salt Lake City for Upland Industries Corp., a subsidiary of the Union Pacific Corp. Mr. Don Wolkins, our director for real estate operations in Utah was scheduled to testify here today, but is unable to be here. Consequently, I am here to present Mr. Wolkins' testimony on behalf of Upland and to extend our thanks and appreciation to Senator Garn for his introduction and support of this bill.

Upland Industries is the real estate arm of the Union Pacific Corp. engaged in real estate activities covering approximately 11 million acres of mineral rights and 1.3 million acres of land in 22 Midwestern, Southwestern and Western States, including about 21,000 acres of land in major metropolitan centers.

Upland develops these holdings as commercial and industrial parks as well as building projects such as offices, hotels and research and development facilities.

We have been active corporate citizens in Utah for a long time. As an example of our commitment to job creation and economic development in Utah, we maintain active membership in the Salt Lake Chamber Committee of 100; local chapters of the National Association of Industrial and Office Parks; the Society of Industrial Realtors; the Utah Industrial Development Executives Association; and the American Economic Development Council.

S. 1911, the bill we are here to support, concerns 150 acres of State-owned land, originally deeded to the State of Utah in 1950 by the U.S. Government. The 150 acres lie within an area adjoining Centennial Park, our 1,600 acre multipurpose business and industrial park which is Upland's primary development in Salt Lake City.

Since 1975, Upland has developed one-third of Centennial Park which is now home to 120 businesses employing over 3,000 people. Adjacent to Centennial Park on the west are 150 acres of State-owned land.

Because of its commercial potential, we believe we can integrate that 150 acres into our development program in a manner that would meet our objective of profitable land development consistent with the needs of the Salt Lake City community.

In return for the 150-acre parcel of land, Upland Industries hopes to trade with the State 3,500 acres of environmentally sensitive lands around the great Salt Lake and additional land elsewhere in northern Utah which has been drawn from a list of properties developed by the State Department of Natural Resources.

We will contribute appraised properties up to a value equal to the value of the 150 acres of land we will be acquiring from the State of Utah.

I have a small map here, if it be necessary, indicating the 3,500 acres.

Senator **Wallop**. Mr. Peck, I have to ask you to conclude, if you would, please. The whole statement will be in the record.

Mr. **Peck**. Very good. I would like to conclude with just a couple of references in response to points made by Mr. Buckley earlier. He was concerned about the conservation habitat equivalent.

Senator **Wallop**. Could I ask you to give us the detail of those contested points in an expansion of the written statement?

Mr. **Peck**. We sure will.

Senator **Wallop**. I really have to ask that you indulge the committee because I have other people and we are now 8 minutes beyond our authorized time of sitting, and I want to have this testimony qualified no matter what.

Mr. **Peck**. Certainly. Thank you.

[The prepared statement of Mr. Wolkins follows:]

UPLAND

The Real Estate Subsidiary
of Union Pacific Corporation

Upland Industries Corporation
50 South Main Street, Suite 1080
Salt Lake City, Utah 84144
801 363 5111

March 14, 1986

The Honorable Malcolm Wallop
Chairman
Subcommittee on Public Lands
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for the opportunity to appear before you and your Subcommittee on March 4, 1986, and make a brief statement in support of S. 1911, a bill to relinqish the United States' reversionary rights to a parcel of land in Salt Lake City, Utah.

Enclosed for entry in the record is a complete copy of our statement relating to the issue of wildlife preservation potential of the parcel.

Please permit me to emphasize what we believe to be the most important points made in our statement. The 150 acres of state property is desert-like land with nominal value as wildlife habitat. The large area of land that Upland Industries proposes to exchange with the State of Utah is of equal monetary value and, further, offers a much greater potential for the long-term preservation of endangered species. By removing the reversionary clauses, the United States and the State of Utah will benefit from the preservation of a rich, natural wildlife habitat that will yield on-going benefits for generations to come. Certainly, Upland expects to generate new economic development on the relinquished 150-acre parcel as Salt Lake City continues its westward expansion.

May we have your support, and that of your colleagues, as you consider the merits of S. 1911.

Sincerely,

Chuck Peck

Charles H. Peck
Assistant Director
Real Estate Operations

Enclosure

UPLAND

The Real Estate Subsidiary
of Union Pacific Corporation

Upland Industries Corporation
50 South Main Street, Suite 1080
Salt Lake City, Utah 84144
801 363 5111

March 4, 1986
Testimony of Donald W. Wolkins
in support of S. 1911
given by Charles H. Peck
Before the U.S. Senate Subcommittee on
Public Lands, Reserved Water and Resource Conservation
Committee on Energy and Natural Resources

Mr. Chairman, my name is Charles Peck. I am the Assistant Director for Real Estate Operations in Salt Lake City for Upland Industries Corporation, a subsidiary of Union Pacific Corporation. Mr. Don Wolkins, our Director for real estate operations in Utah, was scheduled to testify but is unable to be here today. Consequently, I am here to present Mr. Wolkins' testimony on behalf of Upland, and to extend our thanks and appreciation to Senator Garn for his introduction and support of this bill.

Upland Industries' real estate activities cover approximately 11 million acres of mineral rights and 1.3 million acres of land in 22 midwestern, southwestern and western states, including 21,000 acres in major metropolitan centers. Upland develops these holdings as commercial and industrial parks, as well as building projects, such as offices, hotels, and research and development facilities.

We have been active corporate citizens in Utah for a long time. As an example of our commitment to job creation and economic development in Utah, we maintain active membership in the Salt Lake Chamber Committee of 100; local chapters of the National Association of Industrial and Office Parks; the Society of Industrial Realtors; the Utah Industrial Development Executives Association; and the American Economic Development Council.

S. 1911, the bill we are here to support, concerns 150 acres of state-owned land originally deeded to the State of Utah in 1950 by the U.S. Government. The 150 acres lie within an area adjoining Centennial Park, our 1,600 acre multi-purpose business and industrial park, which is Upland Industries' primary development in Salt Lake City. Since 1975, Upland has developed one-third of Centennial Park which is now home to 120 businesses employing over 3,000 people. Adjacent to Centennial Park on the west are the 150 acres of state-owned land. Because of its commercial potential, we believe we can integrate it into our development program in a manner that would meet our objective of profitable land development consistent with the needs of the community.

In return for the 150-acre parcel of land, Upland Industries hopes to trade with the State 3,500 acres of environmentally sensitive lands around the Great Salt Lake, and additional lands elsewhere in northern Utah which have been drawn from a list of properties developed by the State Department of Natural Resources up to a value equal to the value of the 150 acres. The State of Utah approves of the proposed trade and would like to obtain the thousands of acres of land we are offering; land that, because of its strategic location to the Great Salt Lake, is a rich natural wildlife habitat that offers a greater potential than the 150 acres for the long-term preservation of endangered species. In short, we are offering to the State direct ownership and control of lands greater in area, which are far superior for the conservation of wildlife, in exchange for a much smaller parcel of land more suitable for commercial purposes because of its location and its desert-like environment. As an example of the value of this land for wildlife purposes, the State has requested and has been granted a license on a portion of the 3,500 acres for nesting towers for peregrine falcons.

Although both the State of Utah and Upland Industries are in agreement on this matter, there exists in the quitclaim deed from the United States to the State of Utah certain reversionary clauses that allows the U.S. Government to take back the 150 acres if it ceases to be used for wildlife purposes. The entire perimeter of this land has been, or is in the process of being developed into industrial sites, highways, and other business interests, which are reducing some of the area's wildlife value.

In order to make this land exchange possible, passage of S. 1911 is necessary to authorize relinquishment of the reversionary provisions in the quitclaim deed from the United States to the State of Utah. We unequivocally believe that passage of S. 1911 will assist the State of Utah in building its wildlife reserve base while at the same time helping Upland Industries generate commerce and jobs within the state.

This concludes my prepared statement. I will be pleased to answer any questions you may have.

Senator **Wallop**. Mayor Watson.

STATEMENT OF EDWARD S. WATSON, MAYOR, LAKE CHARLES, LA

Mr. **Watson**. Mr. Chairman, members of the committee, it is a pleasure to appear before you today and urge your favorable consideration for S. 2031, legislation to direct the release of certain restrictions, conditions and limitations of property located in Calcasieu Parish, LA, known locally as the Chenault Air Force Base.

Mr. Chairman, I submit a memorandum in support of S. 2031 that sets forth in some detail the history of Chenault Air Force property, its current status, the bleak economic picture in southwest Louisiana and our plans for the future, as well as the local and national benefits that will result from enactment of the bill before you.

This memorandum is jointly offered by the local entities that are currently using the various pieces of the property and is indicative of the broad public support of the consolidation effort.

In 1954, the citizens of Calcasieu Parish overwhelmingly committed themselves to the development of Chenault as a permanent air base. Between 1955 and 1959, we spent more than $26 million and donated lands and improvements to the United States in exchange for the promise of the Air Force to make Chenault a permanent base.

However, in 1961, 2 years later, the last B-47 bomber left Chenault, never to return. Neither the Federal Government nor the Air Force was asked to reimburse us for the money we spent. We now own Chenault but we can only use it for recreational or educational purposes.

It is the magnitude of Chenault's economic potential which makes this legislation so worthwhile not only for us, but for the Federal Government as well.

Our area has suffered from 14 percent unemployment for the past 4 years. In unemployment we now rank sixth out of 245 of the metropolitan cities studied. In 1985 alone we lost 3,000 jobs. We do not mean to say we do not want or need Chenault as it now exists. We cannot deny that our citizens have derived education and recreation benefits from this property, nor do we intend to abandon the property for such purposes.

By removing these restrictions, you will allow us the flexibility we need to develop these properties for recreation, education and industrial purposes. Our citizens want to work. They need to work. A favorable vote would not only allow them to restore this magnificent facility; it would also allow us to put our people back to work so they can regain their self-esteem and support their local, State, and Federal governments.

Thank you, sir.

[The prepared statement of Mr. Watson follows:]

TESTIMONY OF THE HONORABLE EDWARD WATSON
MAYOR OF LAKE CHARLES, LOUISIANA
BEFORE THE SENATE SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER AND RESOURCE CONSERVATION
MARCH 4, 1986

Mr. Chairman, Members of the Committee, it is a pleasure to appear before you today and urge your favorable consideration of S. 2031, legislation to direct the release of certain restrictions, conditions, and limitations on property located in Calcasieu Parish, Louisiana, known locally as the Chennault Air Force Base. On behalf of the thousands of Southwest Louisiana citizens I represent, I would like to thank you, Mr. Chairman, for agreeing to hold this hearing, and our most able junior Senator, Bennett Johnston, for introducing this bill and for requesting the hearing. Simply as a point of information, I would note that a companion House bill, H.R. 4022, introduced by Congressman Breaux, will be the subject of a hearing this Thursday, March 6, before the House Interior and Insular Affairs Subcommittee on Public Lands.

Mr. Chairman, I have appended to this statement, as a further submission for the record, a memorandum in support of S. 2031 that sets forth in some detail: the history of the Chennault Air Force Base property; the current status of the property (including the restrictions imposed on its use); the economic picture in southwest Louisiana; our plans for the property; and the local and national benefits that would result from the enactment of the bill before you. It is, I think, important to note that this memorandum is jointly offered by the local entities that are currently using various pieces of the property and is indicative of the broad public support for our consolidation effort. Several other documents, pertinent to the issue are also attached to this statement and I would ask that they too be made a part of the hearing record. I would, with your permission, summarize that material in my oral remarks here.

Many years ago, during the 1950's, my city was home for a Strategic Air Command (SAC) Squadron of B-47 bombers and support aircraft. In 1961, the last B-47 left Chennault Air Force Base, never to return and the site today remains much as it did twenty-five years ago, largely abandoned and undeveloped. We have been generally ambivalent about Chennault in the past, as our sunbelt economy prospered with a thriving petrochemical/agriculture base. Unfortunately, those days are gone, probably forever, and today Lake Charles has the 6th highest unemployment rate of the 245 metropolitan areas measured in the United States. The State of Louisiana ranks 2nd highest in unemployment, again largely because of our disproportionate economic reliance on petrochemicals and agriculture. In Lake Charles, we feel we have the perfect vehicle to help diversify our economy away from our traditional industries, by reactivating Chennault as an Industrial Air Park, creating jobs and stimulating our economy.

As I describe the dilemma in which we find ourselves today, I hope you will each remain mindful that the last United States Department of Defense dollar spent at Chennault was nearly twenty-five years ago. Chennault is not a recently abandoned military installation that the Federal Government has spent millions of 1980, or even 1970, dollars on. The situation is really quite the opposite. Today, within the corporate limits of the City of Lake Charles, we have a 12,000 foot, 17 inch thick, concrete runway and adjacent properties serving no useful purpose economically, educationally or recreationally. The reason Chennault is economically dormant are the Federal "deed restrictions" which prohibit use of the property for any purpose other than "education" or "recreational" endeavors. Although our community might once have had some pre-eminent need for education/recreation activities, the crisis we face now is that of economic survival. The "deed restrictions" put in place years ago were, no doubt, well intentioned. But they have precluded any develpment of the property's most distinguishing asset--the runway and adjacent properties.

Very briefly, I will trace a series of events which created this unusual situation. During the 1940's and 1950's the citizens of Lake Charles and Calcasieu Parish (County) spent over $26,000,000 in an effort to have Chennault Air Force Base designated a "permanent" SAC base (see attached document. Prominent among the activities during that era were the "donation" to the United States Government of over 1400 of the very acres we are discussing today by our Parish (County) government, and the construction of a new municipal airport so as not to interfere with the military activities ongoing at Chennault. After being successful in receiving the highly sought "permanent" designation for Chennault in November 1958, the entire State was shocked when the Air Force announced its departure in 1961, almost simultaneously with the opening of the new "municipal" airport we built--ironically to insure an Air Force presence in Lake Charles forever.

After several attempts to utilize the abandoned Chennault property, the United States Government declared the property "surplus" and divided the property between four (4) local governmental agencies: the City of Lake Charles, the Calcasieu Parish (County) Government, the Calcasieu Parish (County) School Board, and the State of Louisiana Board of Elementary and Secondary Education. All four (4) entities are, as I previously mentioned, in support of this legislation. Part of the mandate included in the transfer to the four local agencies were the "deed restrictions" that the bill before you seeks to remove, restrictions which have for the last thirteen years limited development at Chennault to either educational (U.S. Department of Education) or recreational (U.S. Department of the Interior) pursuits. In compliance with the terms of the transfer, an outstanding Vo-Tec School, a Firefighter Training Academy and one of the finest municipal golf courses in the South have evolved. We have all tried to live within not only the letter, but the spirit, of the agreement. But times have changed and now we unanimously believe that it is impractical, and unwise, to continue to force one usage upon the Chennault property when it is ideally suited for other, desperately needed uses--namely, economic development.

Some would argue that the local entities should be able to buy the land back, risk free, and perhaps be credited for the 13 years since the last transfer, when the education "deed restrictions" were stipulated to run 30 years. Their thesis would, of course, mention the federal deficit, and the setting of an unwise precedent. We believe that much as the Air Force reversed itself in 1960 on Chennault's "permanent" designation, correction is now required of a mistake made by imposing education/recreation "deed restrictions" on this property. The Air Force was not asked to reimburse us for our $26,000,000 then, and it's inappropriate to demand that we pay anything for Chennault now. My parents already helped pay for Chennault once. When you consider the vast local public money necessary to construct essential avionic improvements at Chennault, the likelihood of us being able to fund a "buy-out" of the deed restrictions, even at 17/30ths of "fair market value", is remote. We might end up with a small project that resembles an Air Park, but the probability is that the majority of the property will remain non-productive as the deed restrictions force us to await the Departament of Education's 30 year clock to run.

The greater absurdity would apply to the Department of the Interior restricted property, wherein we would continue to, in effect, have the only Park in America within a City's corporate limits having an International type runway transversing it, forever. You see, Interior has no 30 year clock on their "restrictions". That Chennault is idle, in and of itself, is today costing the Federal Treasury millions of dollars in revenues lost because there is no economic activity that could be creating new tax sources, not to mention the removal of hundreds of persons from the rolls of overburdened social programs, as they become employed. We have struggled long enough with an experiment which forces an incompatible use upon this property, however noble the idea might have been.

As you know, the fiscal problems facing the Federal Treasury are magnified at the state and local level. Is it fair to suggest that we pay twice for the Chennault property that we would not be discussing today, but for the fact that the taxpayers of southwest Louisiana gave it to the United States Government over 30 years ago? I think not. Our intention is to spend millions of state and local dollars to bring state of the art navigation and instrumentation aids and other improvements to Chennault,making it a model development funded with local public, and private, participation. The resulting economic activity will create jobs and generate tax revenues where none exist today for government, whether it be Federal, state or local. An additional benefit of our initiative at Chennault will be the reactivation of a runway capable of accommodating any aircraft, civilian or military, flying in the world today without burdening the Federal Treasury. The emergency national defense implications of our project cannot be minimized considering Chennault's immediate proximity to the Army's Fort Polk, the Navy's Gulf Homeport Project, and the ongoing unrest in Central and South America.

In closing, I hope each of you will decide that our request is both reasonable and fair. This bill is the only workable solution to our dilemma. The four local public agencies have each made an exhaustive study of various remedies, and we agree that this bill resolves Chennault's problems in everyone's best interest. In 1986 dollars, we already have a $97,000,000 local investment in this property and the time has come for it to start producing some dividends. Your favorable vote will be greatly appreciated by the people of southwest Louisiana.

MEMORANDUM IN SUPPORT OF
S. 2031 and H.R. 4022
99TH CONGRESS
2ND SESSION

SUBMITTED BY:
THE CITY OF LAKE CHARLES
CALCASIEU PARISH SCHOOL BOARD
CALCASIEU PARISH POLICE JURY
AND
SOWELA TECHNICAL INSTITUTE

DATED: MARCH 1, 1986

I. History of Chennault Air Force Base

In 1941, the Calcasieu Parish Police Jury purchased 450 acres of land and gave it to the U. S. Government to establish a medium bomber training base facility. The government purchased an additional 715 acres of land and operated the base until 1946 when it turned the base back to the Parish for use as a civilian airport. In 1951, the base was reactivated as a strategic air command base for the 806th Air Division. It was used for both civilian and military purposes.

Within a few years, it became apparent that there was a need to make the air base a permanent installation. The Air Force indicated a willingness to make Chennault a permanent air base if the Parish could satisfy several requirements - major of which were as follows:

1) Fee simple title in all land to be vested in the U. S. Government;
2) Construction of a separate airport for civilian use;
3) Acquisition of 700 additional acres for the base; and
4) Construction of drainage improvements.

(See Attached "Criteria for Selection of Additional Permanent Air Force Installations")

On April 23, 1954, the Calcasieu Parish Police Jury adopted a resolution in response to this criteria offering to convey fee simple title, without reservation, of all land then occupied by the Air Force at the Lake Charles air base to the United States, along with additional land as designated by the Air Force. By letter dated August 25, 1954 (see attached), H. E. Talbot, Secretary of the Air Force, accepted the Police Jury's offer and designated Chennault as a permanent air base.

Under the terms of its offer, the Parish was also obligated to construct a new municipal airport for civilian use and construct certain drainage improvements. To finance the cost of this project, the Police Jury had to secure voter approval of a $13,670,000.00 bond issue, along with the necessary maintenance taxes. Our elected officials and civic leaders lobbied hard for passage of this bond issue.

On March 1, 1955, the citizens of Calcasieu Parish approved the bond issue. The following excerpt from the Lake Charles American Press, March 2, 1955, summarizes the support of the citizens for this project:

> "An Election Eve crash of an Air Force bomber into a marginal residential area here did not sway property owners in their determination to vote the taxes to make the local air base permanent.
>
> Taxpayers trooped to the polls in unprecedented numbers yesterday to overwhelmingly approve $13,670,000.00 in bond issues and the necessary maintenance taxes for a huge drainage and airport program - both required by the Air Force for a permanent base.
>
> The vote ranged from 4 to 1, up to 123 to 1, in favor of a $5,500,000.00 airport district bond issue, $8,170,000.00 in drainage bond issues, and the maintenance taxes."

The proceeds of these bond issues were used to build a new municipal airport South of Lake Charles and construct the necessary drainage improvements for Chennault. The last installment on this bonded indebtedness was paid by the citizens of Calcasieu Parish in 1985.

Additionally, 1,720 acres of land were donated by the Parish to the U. S. Government. State Highway U. S. 90 and the Missouri Pacific Railroad were relocated to permit expansion of the runway. State Highway 14 was four-laned to improve access to the air base and additional schools and hospital facilities were constructed to accommodate Air Force personnel. Total expenditure by local government agencies exceeded $26,000,000.00 by 1960.

However, in 1961, Chennault Air Force Base was permanently closed. The closure of Chennault devastated the local economy. In just four years, more than 6,000 people moved away. Calcasieu Parish did not recover until the early 1970's.

During the period of 1973 through 1977, the General Services Administration divided Chennault into separate parcels of land and conveyed property to the various local agencies through the Department of Health, Education and Welfare and the Department of Interior. The property conveyed through DOE is now owned by the Calcasieu Parish Police Jury, Sowela Technical Institute, the Calcasieu Parish School Board and the City of Lake Charles. The property conveyed through the Department of Interior is now owned by the City of Lake Charles. Additional acreage which included housing facilities and barracks was purchased by private individuals.

II. Demographics

Lake Charles is located in Calcasieu Parish on Interstate Highway 10 approximately 150 miles east of Houston, Texas. Lake Charles is the economic and cultural center for Southwest Louisiana. The Port of Lake Charles is located thirty miles inland from the Gulf of Mexico. The economy of Lake Charles is heavily dependent on agriculture, petrochemical manufacturing and oil-related industries. According to the last census in 1980, Calcasieu Parish had a population of 167,000 people.

Chennault Air Force Base is located in the eastern section of the City of Lake Charles. Interstate 210 runs north and south along the west boundary of the property. Approximately 1,500 acres of the original Air Force facility are owned by the City of Lake Charles, the Calcasieu Parish Police Jury, the Calcasieu Parish School Board and Sowela Technical Institute. More than one-half of this acreage is devoted to a 12,000 foot runway and adjacent parking aprons paved with more than 17 inches of concrete.

Two hundred and twenty-five acres of the property acquired by the City of Lake Charles is currently being used for an 18-hole municipal golf course and clubhouse. Other major uses include Sowela Technical Institute which provides vocational education through programs funded by the State of Louisiana; Calcasieu Parish Rehabilitation Center, which serves as a detention and rehabilitation center for first-time offenders, and the Calcasieu Parish School Board for warehousing and repair of Parish school buses.

III. The Use Restrictions

Although the United States no longer owns the property, it has restricted use of the various properties to educational and or recreational purposes only. Some of the property is ideally suited for this kind of development. However, the remainder, especially the 12,000 foot runway and adjacent parking aprons, are ideal for industrial development which would generate the jobs our citizens so desperately need.

DOE Restrictions

The restrictions imposed by DOE last for a thirty year term and restrict the property to educational use in accordance with plans submitted by the various owners in connection with their applications for acquisition of the property. If an owner wants to release the property from these restrictions, it can do so by paying the government a specified value, less a credit equal to a specified percentage of the public benefit allowance. This credit is based upon the length of time the property has been used for approved purposes. At the end of thirty years, the use restrictions will no longer apply.

A. DOE Restrictions With Abrogation Provisions:

These restrictions apply to the following properties:

Item 2 (South of Broad Street):

i.	Owner:	City of Lake Charles
ii.	Vendor:	Department of Health, Education and Welfare
iii.	Date Acquired:	6/23/76
iv.	File No.:	1419321
v.	Acreage:	86.0
vi.	Present Use:	Firetraining Center
vii.	Public Benefit Allowance:	$250,000.00
viii.	Approx. Abrogation Value as per Deed:	$175,000.00 (70%)
ix.	Major Improvements:	North Extension of Main Runway (500')

Item 4:

i.	Owner:	Sowela Technical Institute
ii.	Vendor:	Department of Health, Education and Welfare
iii.	Date Acquired:	12/17/73
iv.	File No.:	1317259
v.	Acreage:	150.0
vi.	Present Use:	Vocational Education Facility
vii.	Public Benefit Allowance:	$219,500.00
viii.	Approx. Abrogation Value as per Deed:	$131,700.00 (60%)
ix.	Major Improvements:	Hangars & Parking Apron

Item 6:

i.	Owner:	Calcasieu Parish School Board
ii.	Vendor:	Department of Health, Education and Welfare
iii.	Date Acquired:	12/17/73
iv.	File No.:	1315177

Item 6, Cont'd.:

v.	Acreage:	125.0
vi.	Present Use:	Warehouses, Garage and Maintenance Department
vii.	Public Benefit Allowance:	$292,000.00
viii.	Approx. Abrogation Value as per Deed:	$175,200.00 (60%)
ix.	Major Improvements:	Parking Apron & Hangars

Item X:

i.	Owner:	Calcasieu Parish Police Jury
ii.	Vendor:	Department of Health, Education and Welfare
iii.	Date Acquired:	7/25/74
iv.	File No.:	1340444
v.	Acreage:	308.0
vi.	Present Use:	Rehabilitation Center
vii.	Public Benefit Allowance:	$159,646.00
viii.	Approx. Abrogation Value as per Deed:	$100,577.00 (63%)
ix.	Major Improvements:	Buildings and Main Runway (6,700')

Item 9:

i.	Owner:	Calcasieu Parish Police Jury
ii.	Vendor:	Department of Health, Education and Welfare
iii.	Date Acquired:	6/6/77
iv.	File No.:	1464428
v.	Acreage:	15.0
vi.	Present Use:	Vo-Tech Training for Rehabilitation Center
vii.	Public Benefit Allowance:	$75,000.00
viii.	Approx. Abrogation Value as per Deed:	$54,750.00 (73%)
ix.	Major Improvements:	Hangar & Parking Apron

These restrictions provide in relevant part that:

a) For a period of thirty years from the date of the deed, the property must be used continuously in accordance with the plan submitted by the various governmental agencies as outlined in the applications filed with the Department of Health, Education and Welfare (DOE).

b) If, during this thirty year period, the governmental agency wants to resell, rent, lease, mortgage, encumber or otherwise dispose of the property, or any interest therein, the governmental agency must first obtain the written authorization of the Department of Health, Education and Welfare (DOE) in accordance with the then existing Department of Regulations.

c) In the event that the governmental agency violates any of these restrictions, the Department of Health, Education and Welfare (DOE) has the option to take the property back from the governmental agency.

d) In the event that the governmental agency sells, leases, mortgages, encumbers or otherwise disposes of the property or uses it for purposes other than those specified in its application, then the Department of Health, Education and Welfare (DOE) is entitled to claim and receive all revenues of reasonable value derived directly or indirectly from such sale, lease, etc.

e) The governmental agency further agrees that the United States of America shall have the right, during any period of emergency declared by the President of the United States, to the full unrestricted possession of the property, together with any improvements made to the property subsequent to the conveyance.

These restrictions may be modified or extinguished by:

First: Obtaining the consent of the Department of Health, Education and Welfare (DOE); and

Second: Payment of an amount to the United States of America under the following conditions:

i. If the releases requested by the governmental agency for making the property available to purposes of a third party, payment shall be based upon the current fair market value as of the date of the request of the property, less a credit equal to 3 1/3% of the public benefit allowance specified in the deed for each 12 month period during which the property has been utilized in accordance with the purposes specified in the governmental agency's application for the property; or

ii. If the releases requested by the governmental agency for the purpose of making the property available as security for the financing of new construction, or the acquisition of better facilities, all for the purpose of further advancing the program specified in its application, payment shall be made based upon the public benefit allowance specified in the deed, less a credit of 3 1/3% of the public benefit allowance for each of the 12 months during which the property has been used in accordance with the plan outlined in its application.

B. Revised DOE Restrictions With Abrogation Provisions:

The provisions of these restrictions are somewhat similar to the thirty year restrictions referred to above. They apply to the following items of property:

Tract Y:

i.	Owner:	City of Lake Charles
ii.	Vendor:	Department of Health, Education and Welfare, and Calcasieu Parish Police Jury
iii.	Date Acquired:	6/13/79
iv.	File No.:	1564169
v.	Acreage:	14.0 (already included in acreage specified for Tract X)
vi.	Present Use:	Firetraining Facility
vii.	Public Benefit Allowance:	$70,000.00
viii.	Approx. Abrogation Value as per Deed:	$54,250.00
ix.	Major Improvements:	Portion of Main Runway (1000') and adjacent buildings

Tract Z:

i.	Owner:	Calcasieu Parish Police Jury
ii.	Vendor:	Department of Health, Education and Welfare, and City of Lake Charles
iii.	Date Acquired:	6/13/79
iv.	File No.:	1564208
v.	Acreage:	14.0 (already included in acreage specified for Item 2)

Tract Z, Cont'd.:

vi.	Present Use:	Rehabilitation Center
vii.	Public Benefit Allowance:	$70,000.00
viii.	Approx. Abrogation Value as per Deed:	$54,250.00
ix.	Major Improvements:	Portion of Main Runway

The properties exchanged were subject to the thirty year restrictions summarized above. However, the Calcasieu Parish Police Jury and the City of Lake Charles were allowed to exchange these properties without payment of any abrogation amount because "the Secretary (DOE) had approved the program of educational use and the Administrator of General Services had not objected to the reconveyance of the property for educational purposes".

The restrictions which now apply to these properties can be summarized as follows:

a) The restrictions are stated to last for a specified term.

b) The property must be used for the educational purposes as contained in the application filed with the Department.

c) The property can be used for no other purpose except as approved by the Secretary.

d) The property may not be resold, rented, leased, mortgaged or encumbered, except as the Secretary may authorize in writing.

e) The governmental agency will at all times be and remain a tax supported organization or an association exempt from taxation under Section 501C3 of the Internal Revenue Code of 1954.

f) In the event of any breach of any of the conditions contained in this agreement, the Secretary shall have the right to take the property back and acquire immediate possession.

g) The governmental agency may secure a release of these conditions by obtaining the consent of the Secretary and paying the United States 1/360th of the percentage public benefit allowance granted for each month of the unexpired term of the restrictions.

NOTE: These abrogation provisions do not distinguish between abrogation to lift restrictions for use by the current owner and abrogation to lift restrictions for sale of property to a third party.

h) In the event the property is sold or otherwise disposed of without the consent of the Department, then all revenue and other benefits derived from such sale or disposal shall be paid to the United States Government.

Interior Restrictions:

The land acquired by the City of Lake Charles from the Department of Interior is restricted to recreational use. The restrictions last in perpetuity. There is no buy-out provision to enable the City to exempt this property from the use restriction as there is in the DOE properties. The only way to lift these restrictions is to deed the property to GSA and then bid the property back based on fair market value. There is no guarantee the City would be able to reacquire the property.

These restrictions apply to the following properties:

Item 5:

i.	Owner:	City of Lake Charles
ii.	Vendor:	Department of Interior
iii.	Date Acquired:	12/17/73
iv.	File No.:	1315199
v.	Acreage:	764.0
vi.	Present Use:	Golf Course, Tennis Course, Baseball Complex
vii.	Fair Market Value at Time of Sale:	$465,000.00
viii.	Major Improvements:	South Runway (3000'), Parking Aprons, Buildings

Item 7-B:

i.	Owner:	City of Lake Charles
ii.	Vendor:	Department of Interior
iii.	Date Acquired:	12/24/74
iv.	File No.:	1358693
v.	Acreage:	50.0
vi.	Present Use:	Airshow & Sporting Events
vii.	Fair Market Value at Time of Sale:	$19,854.00
viii.	Major Improvements:	Parking Apron

Item 8:

i.	Owner:	City of Lake Charles
ii.	Vendor:	Department of Interior
iii.	Date Acquired:	1/23/78
iv.	File No.:	1493946
v.	Acreage:	25.0
vi.	Present Use:	Softball Practice Fields
vii.	Fair Market Value at Time of Sale:	$500,000.00
viii.	Major Improvements:	Gymnasium and Related Recreational Facilities

These restrictions provide in relevant part as follows:

a) The restrictions shall run in perpetuity.

b) The property may be used only for those public purposes set forth in the grantee's application and cannot be changed except by mutual consent.

c) In the event the property ceases to be used for its approved purposes, then the ownership of the property shall revert to the United States Government at the option of the government.

d) The property may not be sold, leased, assigned, or otherwise disposed of, except to another eligible governmental agency, without the written consent of the Department.

IV. Purpose of Senate Bill No. 2031

Chennault Air Force Base is now owned by the Calcasieu Parish Police Jury, the City of Lake Charles, the Calcasieu Parish School Board and Sowela Technical Institute. The main runway and parking aprons are crossed by chain-link fencing which marks the boundary of the respective ownerships. Portions of the 12,000 foot runway are occasionally used for airshows, sporting events and festivals.

The current owners have used the property for various educational and recreational purposes. None of these uses involve the main runway or runway system to any significant degree. Consequently, the hundreds of acres which make up the runway system remain largely unused other than as a means of providing parking or as a means of moving from one area of the base to another.

The legislation currently pending before this committee would free the property from the current use restrictions so the current owners can pool their resources and take advantage of the potential the main runway and runway system offer for the development of an industrial air park.

The local owners have been studying Chennault for quite some time. They have mutually agreed it would be in the best interest of the citizens of Calcasieu Parish and Southwest Louisiana to place the Chennault properties under the control of a single administrative entity so the property can be developed as an industrial air park.

V. Economy of Southwest Louisiana

At the time GSA devised its plan to divide Chennault into separate parcels and sell these tracts to the various local agencies, Southwest Louisiana was enjoying unequalled prosperity as a result of a thriving economy based on the petrochemical, agricultural and oil-related industries. However, the decline of these industries has severely impacted our local economy. Today, Lake Charles has the sixth highest unemployment rate of the 245 largest metropolitan areas in the United States. For the past four years, our unemployment rate has averaged 14% and exceeded one and one-half times the national average. Lake Charles' current unemployment rate of 14.1% ranks first among the major metropolitan areas in Louisiana.

Tax revenues for all local governmental agencies have failed to keep pace with inflation and the increased cost of providing basic services. As a result, the City, the Police Jury and the School Board have had to cut back services and lay off employees. State funding for vocational education at Sowela Technical Institute will be cut during the next school year. The anticipated loss of federal revenue sharing funds for fiscal year 1987 will only aggravate the current financial situation.

Families have been separated while husbands seek work in other areas of the country. Some lifelong residents have been forced to uproot their families and move to other areas to find work. For the past three years, our area has suffered from a negative economic growth rate. In 1985 alone, total non-agricultural employment for Calcasieu Parish decreased from 60,200 jobs in December, 1984, to 57,200 in December, 1985 - a total of 3,000 jobs lost. Business closures currently outnumber business openings. Housing starts are virtually at a standstill. Since 1981, the Civil Sheriff's Office has worked overtime to handle mortgage foreclosures on family homes and items of personal property.

Our citizens are a proud people. The economic adversity of recent years has only made us more determined to work together to put our people back to work and restore stability to our local economy. The obvious solution is to diversify and expand our economic base. We believe the Chennault properties can be part of this solution.

In 1982, a feasibility study was prepared by Candeub, Fleissig & Associates, Inc. to determine whether or not the Chennault properties could be used for economic development. The study concluded that:

> "Natural advantages of interstate highway, rail, air and port facilities raise Chennault's potential to national and even international significance. Immediate action to initiate a ten to fifteen year development program is recommended.
>
> The Chennault Development Plan recognizes and protects public investment in existing recreational and institutional facilities. At the same time, however, a more vigorous industrial development program will yield tremendous economic benefits to Calcasieu Parish and the City of Lake Charles including: (1) preservation of 485 acres of prime industrial land on the Chennault base; (2) potential yield of more than five million square feet of industrial space; (3) potential for 6 to 10,000 new jobs; and (4) annual return of $1.75 million in ad valorem property taxes to the City and Parish besides other applicable business taxes."

However, before we tear down the fences and artificial barriers which currently divide the runway and other properties at Chennault, we must first remove the use restrictions imposed by DOE and Interior which prohibit the use of Chennault for anything other than approved educational or recreational purposes. The Candeub study concluded the only way to realize the full potential of Chennault is to free all of the property from these use restrictions.

The main runway at Chennault is over 12,000 feet long. The entire runway system was designed to accommodate B-47's and air transports and is the key to development of Chennault as an industrial air park. The north 8,500 feet of the main runway and adjacent apron system is subject to educational use restrictions imposed by DOE. The south 3,500 feet of the runway, together with the adjacent runway apron system and storage facilities, are subject to recreational use restrictions imposed by Interior.

Therein lies the problem.

In October, 1985, the City attempted to get permission from the Department of Interior to transfer five acres of unimproved property (currently being used for softball practice fields) to the State of Louisiana for the construction of an office and Courtroom facilities for the Third Circuit Court of Appeal. Interior denied this request because the proposed use did not conform to its recreational use restrictions. In a letter dated October 10, 1985, the Department advised as follows:

> "Our assistance to you in this regard will be limited, because there is no guaranteed method of accomplishing what you propose. All we can do is help you revert the property to the United States. The General Services Administration (GSA) would then screen the property with federal agencies to determine any federal interest. If no federal interest is evident, interested State and local agencies, including the City of Lake Charles, could then work with GSA for a negotiated sale based on fair market value. The City may or may not eventually end up with the property."

The City of Lake Charles has also been advised the same procedures would apply to any effort to use the Interior property in connection with consolidation of property at Chennault. There is no guarantee the property could ever be re-acquired.

Senate Bill No. 2031 and House Resolution No. 4022 would exempt the main runway and related runway system, together with adjacent buildings, from these use restrictions imposed by DOE and Interior thereby making the property available for development as an industrial air park.

VI. Advantages of S.B. No. 2031 and H.R. 4022:

A. Economics:

Men and women would go back to work. Homes would be built. Mortgage payments would be met. Our unemployed would once again contribute to the cost of providing essential government services. Even if a work force of only 6,000 people were employed at Chennault, the federal income tax revenues generated by their wages alone would more than pay for Chennault in one year.

The immediate effect of the creation and establishment of Chennault as an industrial air park would be felt in the construction trades. It is anticipated that more than

$10,000,000.00 will be spent in order to refurbish the runway system, control tower and adjacent storage facilities so that air related industries could use the facility.

The long range effect on employment is virtually unlimited. As pointed out in the Candeub study, the development of Chennault as an industrial air park would bring new industry and thousands of new jobs to Southwest Louisiana. Such an air park would blend in with our existing deepwater port facilities and transportation systems and further enhance their economic development.

B. Highest and Best Use:

Chennault was designed to be used primarily as an air base. Its location on the Gulf Coast between Houston and New Orleans makes it ideal for immediate air industrial use.

The main building complexes have been upgraded and expanded for educational use. The recreational facilities originally included at Chennault have been modernized and new ones have been added. We do not intend to abandon these projects. Too much time and money has been spent in their development. These educational and recreational uses have well served the needs of local government for the past several years.

However, the heart of Chennault, its main runway and parking apron system, together with adjacent hangars and storage buildings, are ideally suited for air transport and related industrial activities. Neither the educational nor the recreational uses of this portion of Chennault can compare with the economic potential the runway system has as an industrial air park.

Millions of dollars were spent in building Chennault. The recreational and educational advantages which we have enjoyed cannot by themselves continue to justify this investment. It is only through removal of these use restrictions that we can develop the runway system and use it to its full potential.

C. National Emergency:

Neither Senate Bill No. 2031, nor House Resolution No. 4022, would impair the right of the United States to have access to Chennault for national defense purposes in time of war or national emergency. However, if such a situation were to arise today, the government would have to spend a substantial sum of money and countless additional man hours to tear down the physical barriers which now divide the property and reactivate the runway system before Chennault would be of any use for national defense.

The net effect of the consolidation of the Chennault properties for use as an industrial air park would be to reactivate a military air base at no expense to the federal government. The Army installation at Fort Polk is within seventy miles of the air base and could use Chennault for deployment in a moment's notice.

The proposed Naval homeport to be constructed by 1991 is located within fifteen miles of Chennault and will have access to Chennault via direct rail service. The national defense implications of the reactivation of Chennault cannot be minimized given the strategic importance of the Gulf Coast region in the event of continued unrest in Central and South America.

VI. Conclusion

In 1954, the citizens of Calcasieu Parish overwhelmingly committed themselves to the development of Chennault as a permanent air base. Between 1955 and 1959, we invested more than $26,000,000.00 in land and improvements in exchange for the promise of the Secretary of the Air Force that Chennault would be made a permanent installation. However, the last B-47 bomber left Chennault in 1961, never to return. Neither the government, nor the Air Force, was asked to reimburse us for the money we spent when the decision was made to close Chennault.

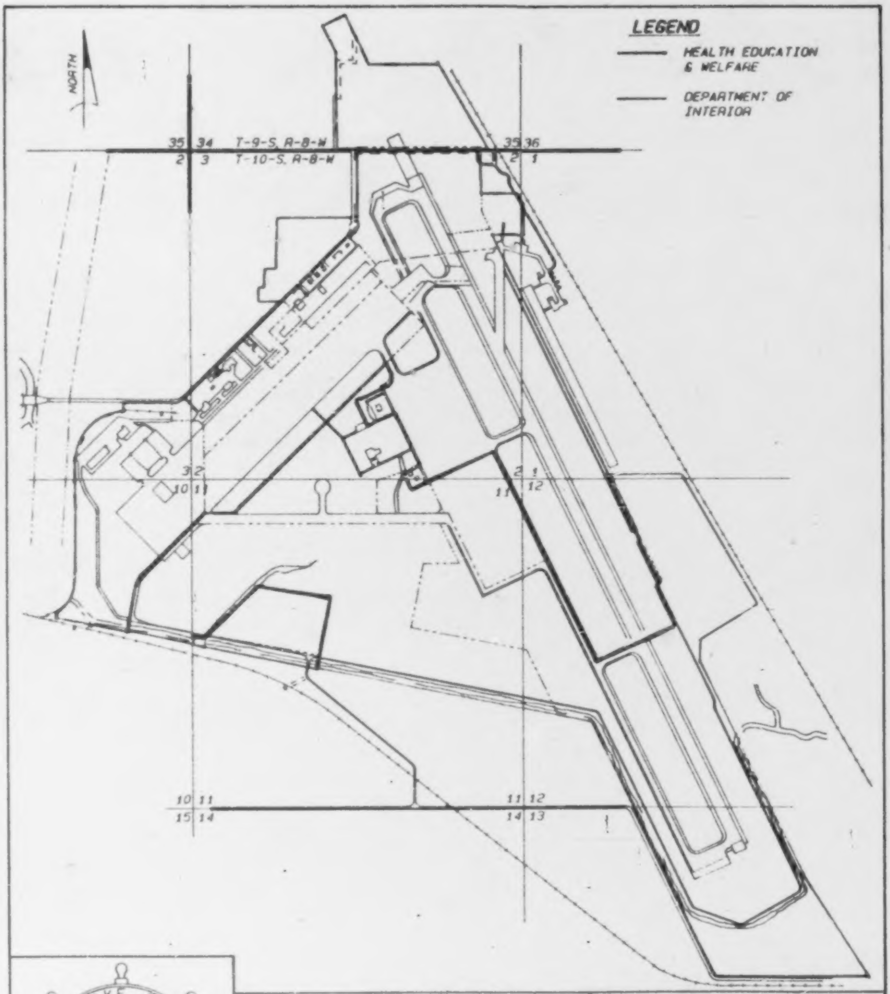
The citizens of Calcasieu Parish now own Chennault. All we are asking for is the freedom to use Chennault as it now exists to its full potential. This potential includes not only recreational and educational purposes, but development as an industrial air park as well. We have already paid for Chennault once. We do not feel that it would be fair to force us to pay again to abrogate the property from the DOE use restrictions or to give up the property and rebid it back through the Interior disposal process. It is highly unlikely that in our present economy we would be able to raise the public funds necessary to free the property from the use restrictions and then reactivate and develop the runway system for use as an industrial air park.

We do not mean to imply that we do not need or want the Chennault properties as they are presently divided. We cannot deny that the citizens of Calcasieu Parish have derived educational and-recreational benefits from this property. Nor do we intend to abandon the property for such purposes. By removing these use restrictions from these properties, you will allow us the flexibility we need to develop the properties for recreational, educational and industrial purposes.

Congressional approval of this legislation would allow us to tear down the fences and artificial barriers which now divide the runways and parking aprons, reactivate the runway system and related structures and consolidate the properties for economic development. Once this is done, the citizens of Calcasieu Parish, as well as the Department of Defense in times of national emergency, will be able to use this property according to its highest and best use and for the purposes for which it was designed.

It is the magnitude of Chennault's economic potential which makes this legislation so worth while not only for the citizens of Calcasieu Parish but the local and federal governments as well.

The legislation which we propose involves a no lose proposition as far as the federal government is concerned. Ours is a simple request. We ask for nothing but opportunity. Free the property from the use restrictions so the present owners can collectively develop this property for the public good. Our citizens want to work - they need to work. A favorable vote will not only allow us to restore this magnificent facility, it will also enable us to put our people back to work so that they can regain their self-esteem and support their government rather than depend on it.


LEGEND
HEALTH EDUCATION & WELFARE
DEPARTMENT OF INTERIOR
NORTH
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35 36
2 1
3 2
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15 14
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14 13

CITY OF LAKE CHARLES

Office of City Planning

P O BOX F LAKE CHARLES, LOUISIANA 70602-3706
(318) 491-1200

CHENNAULT PROPERTIES RESTRICTED PROPERTIES UNDER FEDERAL AGENCY JURISDICTION

D. L. & L.
COMPUTER
DRAFTING SERVICE

DATE 2-13-86 DRAWN B Christian DWG NO

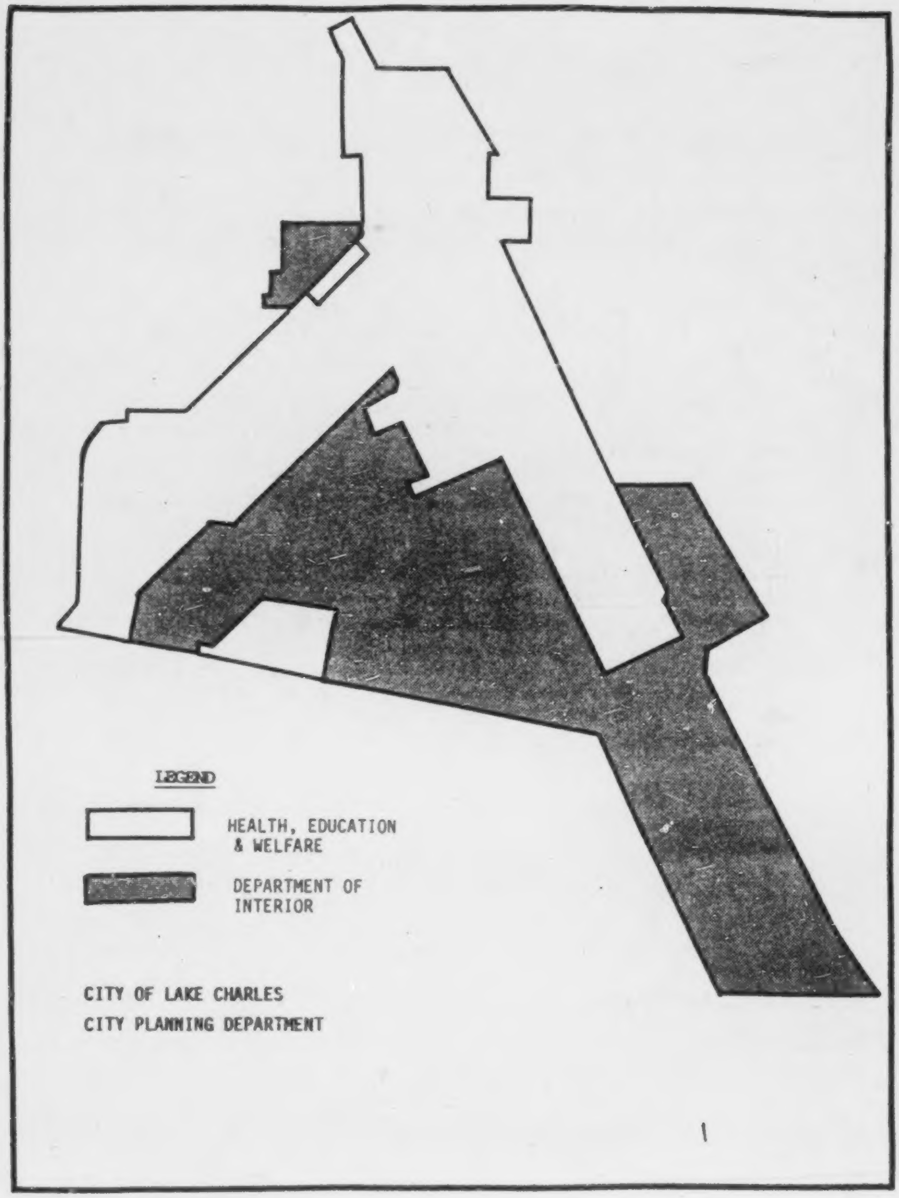

LEGEND
HEALTH, EDUCATION & WELFARE
DEPARTMENT OF INTERIOR
CITY OF LAKE CHARLES
CITY PLANNING DEPARTMENT

EXHIBIT No. 3

COPY

CRITERIA FOR SELECTION OF ADDITIONAL PERMANENT AIR FORCE INSTALLATIONS

I. BASE MUST ULITMATELY BE UNDER EXCLUSIVE CONTROL OF THE AIR FORCE AND UNDER EXCLUSIVE FEDERAL JURISDICTION.

II. BASE SHOULD BE LOCATED WHERE CONSTRUCTION, MAINTENANCE AND LOGISTIC SUPPORTABILITY ARE MOST ECONOMICAL CONSISTENT WITH OPERATIONAL REQUIREMENTS.

III. BASE MUST BE EXPANDIBLE OR ADAPTABLE TO MEET THE LONG-TERM DEVELOPMENT TRENDS AND NEEDS OF THE AIR FORCE TO INCLUDE REAL ESTATE INTERESTS, LAWS AND/OR ORDINANCES RESTRICTING USE OF ACREAGE ADJACENT TO THE BASE, AS NECESSARY, TO INSURE CONTINUED SAFE FLYING ACTIVITIES.

IV. GOVERNMENT MUST HAVE FEE-SIMPLE TITLE TO THE PROPERTY CONSTITUTING THE BASE AND WHENEVER POSSIBLE, WITHOUT RESTRICTIVE CLAUSES IN THE DEED.

V. BASE MUST BE IN PROXIMITY TO A CIVILIAN COMMUNITY, CAPABLE OF PROVIDING SUPPLEMENTARY HOUSING AND OTHER ESSENTIAL COMMUNITY FACILITIES AND SERVICES, CONSISTENT WITH THE HAZARDS AND/OR NUISANCE FACTORS ASSOCIATED WITH USAF ACTIVITY AT THE BASE OR SITE.

VI. ATTITUDE OF LOCAL PUBLIC SHOULD BE FAVORABLE.

VII. BASE MUST HAVE BENEFIT OF MINIMUM AIRSPACE INTERFERENCE FROM CIVIL AND OTHER MILITARY AVIATION.

VIII. MAXIMUM POSSIBLE UTILIZATION SHALL BE MADE OF EXISTING PERMANENT AIR BASE STRUCTURE, CONSISTENT WITH CURRENT OPERATING REQUIREMENTS AND LONG-TERM OBJECTIVES.

IX. BASE MUST BE FREE FROM INDUSTRIAL OR OTHER CIVILIAN ACTIVITIES OR ENDEMIC HEALTH CONDITIONS THAT ARE DETRIMENTAL TO SAFE FLYING AND LIVING CONDITIONS.

X. THERE IS A PERMANENT NEED FOR THE FACILITY.

XI. THE LOCATION MUST BE CONSISTENT WITH THE MISSION.

The following resolution was offered by Mr. [illegible]
and seconded by Mr. Dumatrait :

RESOLUTION

WHEREAS, the Police Jury of Calcasieu Parish, Louisiana, and other public and civic bodies throughout Lake Charles and Calcasieu Parish, Louisiana, have evidenced a desire that the Lake Charles Air Force Base be designated a permanent installation by the United States Air Force, and

WHEREAS, it is recognized that the United States Air Force desires a clear statement of the continued cooperation it may expect from the governing authority of the Parish of Calcasieu, Louisiana, in order to meet Air Force requirements for the designation of the Lake Charles Air Base as a permanent installation, now, therefore,

BE IT RESOLVED BY THE POLICE JURY OF THE PARISH OF CALCASIEU, LOUISIANA, that the following assistance will be given to the United States Air Force to meet its requirements to designate the Lake Charles Air Base as a permanent installation.

That the Police Jury of Calcasieu Parish, Louisiana, will donate, in fee to the United States Air Force, without reservations, the following lands:

A. All of the land now occupied by the United States Air Force at the Lake Charles Air Base.

B. That additional land designated by the Air Force on the real estate map prepared by the Air Force, the exact boundaries to be designated by the United States Air Force.

The Police Jury is presently the owner of all the land described in A. hereinabove, and agrees to immediately institute proceedings to acquire that land described in B. hereinabove upon receipt of a firm notice of intention by the United States Air Force to designate said Lake Charles Air Base as a permanent installation.

That the Police Jury of Calcasieu Parish will provide adequate aviation easements as indicated in Air Force regulations 86-3, as implemented. Specifically to provide adequate easements in the area adjacent to the above described lands as requested by the United States Air Force.

That the Police Jury of Calcasieu Parish, Louisiana, will cooperate with the Air Force in passing zoning ordinances to obtain optimum protection to the approaches to the Air Base required by the Air Force as indicated in its regulation, Air Force regulation 86-3, as implemented.

Furthermore, the Police Jury of Calcasieu Parish will cooperate in passing zoning ordinances with respect to the land utilization adjacent to the installation boundaries, to insure that future expansion may be undertaken without extensive readjustments to the community.

That the Police Jury of Calcasieu Parish will, insofar as possible, cooperate with the Air Force in the removal of anything that is considered a flight hazard by the Air Force, and in the prevention of installation of construction of any further flight hazards in the area required for its operations. The Police Jury will also cooperate with the Air Force to have the Base free from industrial or other civilian activities or endemic health conditions that are detrimental to safe flying and living conditions.

That the Police Jury of Calcasieu Parish will cooperate fully in recommending to the Governor that favorable consideration be given to the Government's application for the cession of jurisdiction to the United States over the subject Airport. However, the Police Jury believes that this has already been taken care of through an Act of the Louisiana State Legislature.

That it will be recognized by the Police Jury of Calcasieu Parish, that the United States Air Force will have exclusive use and control of the Airport facilities and if used by Commercial Carriers, all landing fees paid for the use of such Airport facilities will be paid to the United States Government under the terms of Air Force regulations 87-7, subject to any division of the fees with the Police Jury or any additional fees charged by the Police Jury as may be permitted or approved by the Air Force.

It is further recognized by the Police Jury of Calcasieu Parish, that long range Air Force requirements called for the use of the Lake Charles Air Force Base by Military Aircraft only, and the Police Jury agrees to take necessary action to achieve this objective with the provision that controlled Aircraft may be permitted to use the Base until the Police Jury can provide other suitable facilities. That the Police Jury will cooperate with the United States Air Force to remove uncontrolled Aircraft from the Lake Charles Air Force Base as soon as is practical. ✓

That the Police Jury of Calcasieu Parish will cooperate insofar as possible to have the public utility companies, or privately owned companies now furnishing gas, electricity, telephone and telegraph service in said above described area, to furnish any additional facilities as required.

That the Police Jury of Calcasieu Parish will cooperate in assisting the Air Force in obtaining additional water supply and additional sewer system for the Air Force facilities if required.

That the Police Jury of Calcasieu Parish will cooperate insofar as possible in making available transportation by bus, and railroad, to and from the City of Lake Charles, Louisiana, and the Airport, in order to meet the needs of the personnel of said Airport.

That the Police Jury of Calcasieu Parish will cooperate insofar as possible in assisting the Air Force personnel and their families in finding housing whenever it is necessary; the Police Jury of Calcasieu Parish will cooperate insofar as possible in providing personnel who are stationed at the Airport Base.

That the Police Jury of Calcasieu Parish will cooperate insofar as possible in having churches of all denominations in the City of Lake Charles, Louisiana, and throughout the Parish accept the Military personnel, as well as their dependents, as members and welcome guests to their churches; that it is expected that the ministers and clergymen connected with the aforementioned churches will make determined efforts to have Air Force men and their families made welcome in the congregations.

That the Police Jury of Calcasieu Parish will cooperate insofar as possible in having Military personnel connected with the Air Force and their families accepted as active participants in the cultural and recreational life in the various communities of Lake Charles, Louisiana.

That the data contained herein has been especially prepared at the suggestion of the Air Force team investigating the Lake Charles Air Base, headed by Colonel Herbert E. Johnson, Jr. and Colonel R. W. Stanley, headquarters United States Air Force, as evidence of the interest of the Police Jury of Calcasieu Parish, in a plan for the permanent use of the Lake Charles Air Base by the Air Force and in the hope that it can be considered as a pledge of the cooperation of the Police Jury to the fullest extent in bringing this matter to a successful conclusion.

And the resolution was duly voted on with the following results:

YEAS: Messrs. Christ, Daugherty, Douglas, Dumatrait, Hayle, Long, Mount, Musser, Swift, and Verret.

NAYS: None

ABSENT: Messrs. Duplechan, Fontenot, President Simmons and Thompson

NOT VOTING: Vice-President LeBleu

And said resolution was declared duly adopted and was approved on this 19th day of April, 1954.

ATTEST:

Secretary

APPROVED:

ML LeBleu

Vice- President

CERTIFICATE

I, the undersigned, do hereby certify that the above and foregoing is a true and correct copy of resolution adopted by the Police Jury of Calcasieu Parish, Louisiana, convened in regular session on the 13th day of April, 1954.

Jennabeth P. Smythe

Jennabeth P. Smythe, Secretary

DEPARTMENT OF THE AIR FORCE
Washington

August 25, 1954

Office of the Secretary

Dear Mr. LeBleu:

I am very happy to advise you that the Air Force accepts your offer to donate Lake Charles Air Force Base and certain other lands adjacent to the base, as outlined in your Resolution of 13 April 1954.

Lake Charles AFB has been designated a permanent installation, based on your offer to donate land and other interests. As soon as this transaction can be completed and funds are made available by Congress, we will proceed with the additional expansion at this base. The designation of permanency carries with it the firm intention of the Air Force to develop Lake Charles AFB to its capability on a long term basis.

Representatives from the Corps of Engineers will contact you in the immediate future to work out details regarding the property transfer. To assist you in planning for your conferences with the Engineers, I have enclosed a base plan delineating the land requirements. This plan outlines the land required for base expansion, in addition to that covered under the existing lease.

Your cooperation and interest in this Air Force Project is sincerely appreciated and I trust that the cordial relations which now exist between the Air Force and your community will continue in the future.

Sincerely,

/s/ H. E. TALBOTT

Enclosure

Mr. M. C. LeBleu
President, Police Jury, Calcasieu Parish
Lake Charles, LA

This is to certify that this is a true and correct copy of a letter received by the Calcasieu Parish Police Jury, governing authority of Calcasieu Parish, Louisiana, on August 27, 1954, from the Honorable H. E. Talbott, U. S. Secretary of the Air Force, Washington, D.C.

Jennabeth P. Smythe

JENNABETH P. SMYTHE, Secretary
Calcasieu Parish Police Jury

Date: February 27, 1986

Senator **Wallop**. Thank you, Mayor Watson.

Ms. McCall.

STATEMENT OF GERE McCALL, COORDINATOR TO THE NATIONAL ADVISORY COUNCIL, KEEP AMERICA BEAUTIFUL, INC.

Ms. **McCall**. Yes. Thank you, Mr. Chairman. I am Gere McCall of Keep America Beautiful, and I do want to express my regret that Mr. Roger Powers, president of KAB, did have to leave suddenly.

We thank you for the opportunity to support bill S. 1888. We believe the legislation would enlist the public and private sectors and thousands of citizen volunteers across the country in efforts to improve our public lands and culminating in a National Cleanup Day that would be celebrated annually.

Keep America Beautiful, founded in 1953, is a private nonprofit public service organization dedicated to improving attitudes toward solid waste management. We support and provide programs for litter prevention and voluntary recycling. We now assist localities in helping to change attitudes which we feel is the heart of the littering problem by offering an educational community-wide program called the Keep America Beautiful system.

Representatives from business and industry, community organizations, the education community and local government are coming together at the grass roots level to develop and implement a comprehensive program which is mainly supported by volunteers. Over 375 certified communities in nearly 40 States are now experiencing up to an 80 percent sustained litter reduction. The percentage varies according to the length of implementation of the program in a locality.

These communities have an impact on over 58 million Americans.

Our constituency is reflected in a National Advisory Council, the NAC, which provides KAB with program and communication direction. It includes more than 75 members from professional organizations such as the Council of State Governments, the American Public Works Association, the Association of Towns and Townships, the Girl Scouts, Federation of Women's Clubs and nearly 15 Federal agencies, including the Bureau of Land Management, the Army Corps of Engineers, Park Service, Forest Service, and Fish and Wildlife Service. Industry representatives also sit on the Council.

Three years ago in addressing the problems on public lands the National Advisory Council decided to appoint a Public Lands Day Task Force. It is chaired by a representative from the Corps of Engineers and it has been instrumental in the development of our own Public Lands Day Program.

We are now into the third year of the program and this year we have 100 pilot programs planned. We worked very closely, and still do, with the Greers Ferry Lake project and it serves as our national model in our own Public Lands Day Program.

We feel that personal involvement such as the extensive investment by volunteers in this Cleanup Act and Day would generate an attitude of caring and concern and from that attitude comes more responsible behavior. The benefits are real and many.

Of course, we feel that we would probably work toward an establishment of an American cleanliness ethic, so that not only would Americans be cleaning up and be concerned about their public lands, but because there was an attitude change through their direct involvement on public lands, they would carry this attitude into wherever they were in America.

Senator **WALLOP**. Thank you. I do understand that you have more to go. The whole statement will be in the record.

[The prepared statement of Mr. Powers follows:]

KEEP AMERICA BEAUTIFUL, INC.
99 PARK AVENUE / NEW YORK, N.Y. 10016 / TELEPHONE (212) 682-4564

TESTIMONY
for the
PUBLIC LANDS CLEANUP ACT OF 1985
Bill Number 1888
before the

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION
COMMITTEE ON ENERGY AND NATURAL RESOURCES
U.S. Senate

Roger W. Powers
President
Keep America Beautiful, Inc.

March 4, 1986

Mr. Chairman and Members of the Subcommittee, I am Roger Powers, President of Keep America Beautiful, Inc. I thank you for the opportunity to present testimony for the Public Lands Cleanup Act of 1985, bill number 1888. This legislation would enlist the public and private sectors and thousands of citizen volunteers across the country in efforts to improve our public lands culminating in a national cleanup day to be celebrated annually.

Keep America Beautiful, Inc. (KAB), founded in 1953, is a private, nonprofit public service organization dedicated to improving attitudes toward solid waste management. Our membership includes 186 corporations, trade associations and labor unions. We support and provide programs for litter reduction, recycling and resource recovery and encourage beautification.

In the first twenty years of its history, KAB approached the problem of littering, our main concern in the handling of waste, in two major ways: a highly successful advertising campaign spotlighting the concerned Indian, Iron Eyes Cody, and the observance of an annual cleanup day. In recent years, we have become aware that continuous citizen involvement through program, not merely project, development was needed to establish a sustained litter reduction throughout America. Keep America Beautiful now assists localities in helping to change attitudes, the heart of the littering problem, by offering an educational, community-wide program, called the Keep America Beautiful System. Representatives from business and industry, community organizations, the education community and local government are coming together at the grass roots level to develop and implement a comprehensive program which is mainly supported by volunteers. Over 375 certified communities in nearly 40 states are now experiencing up to 80% sustained litter reduction. The percentage varies according to the length of implementation of a local KAB system. These communities have an impact on over 58 million Americans.

A National Advisory Council (NAC) provides KAB with program and communication direction. The NAC includes more than 75 members from professional organizations, such as the Girl Scouts of the U.S.A., the General Federation of Women's Clubs, the

American Association of Retired Persons, and nearly 15 federal agencies, including the Bureau of Land Management, the U.S. Army Corp of Engineers, the Park Service, the Forest Service and the Fish and Wildlife Service. Industry representatives also sit on the Council.

Three years ago, in addressing the growing problem of the various forms of misconduct in public lands, such as littering and theft, the NAC decided to appoint a Public Lands Day Task Force. Chaired by a representative from the Corp of Engineers, the Task Force has been instrumental in the development of our Public Lands Day program and continues to give expert direction, including establishing a goal for 1986 of 100 pilots in cities, towns and counties across America. We began implementation of Public Lands Day in 1984 with 5 pilots, one being the highly successful Greers Ferry Lake, "Great Arkansas Cleanup" which serves as a national model.

This background leads to why we are presenting testimony today on the "Public Lands Cleanup Act of 1985", introduced by Senator Dale Bumpers of Arkansas.

Keep America Beautiful supports this legislation in concept and believes the establishment of a national public lands program and Cleanup Day involving the federal land management agencies, the public and private sectors and great numbers of citizen volunteers, will lead to a "national stewardship ethic". A sense of stewardship will be derived from a feeling of ownership as thousands of Americans become directly and personally involved in the local, state and federal parks, recreation areas and waterways of our country. By an investment of time, energy, committment and sometimes dollars from individuals and businesses, citizens will clean riverbanks, build outdoor educational labs for students, restore campgrounds, learn about plant and wildlife indigenous to their own area and maintain and improve their own public lands.

Personal involvement generates an attitude of caring and concern, and from such an attitude comes more responsible behavior. Our nation will have cleaner parks, less pillage and less violation of our precious communal space.

The benefits of a program of this magnitude are real and many:

- o Establishment of a "national stewardship ethic".
- o Preservation, maintenance and improvement of our federal, state and local public lands.
- o Intense use of volunteers which will ease budget constraints.
- o Creation of a cooperative spirit between public and private sectors which will spill over into dealing with other community concerns.
- o Creation of the spirit of ownership, pride and care engendered from citizen activity which will produce a wider positive display of behavior other than just that on public lands.

Keep America Beautiful would appreciate the opportunity to serve as a facilitator in the birth and expansion of the "Public Lands Day Cleanup Act of 1985", both in the comprehensive program and the celebration of that program with an annual Public Lands Cleanup Day. With the support of our National Advisory Council, the NAC-created Public Lands Day Task Force, and our current certification of over 375 Keep America Beautiful System communities, KAB stands ready to provide a network of national and grass roots organizations.

We offer support to the United States Department of Interior's, "Take Pride in America" campaign and all related initiatives by federal land management agencies listed in this legislation.

We will work to encourage cooperation between the public and private sectors and will support efforts on all lands belonging to the public, whether local, state or national.

We believe Bill number 1888 will provide a means to the establishment of a sense of stewardship in users of the land and will become integral to the development of a national attitude toward cleanliness with resulting conduct conducive to a more beautiful America.

We wish to express appreciation to Senator Dale Bumpers for his sponsorship of this legislation.

Mr. Chairman, I hope this testimony helps in the determination of support for Bill number 1888. I will be glad to answer any questions.

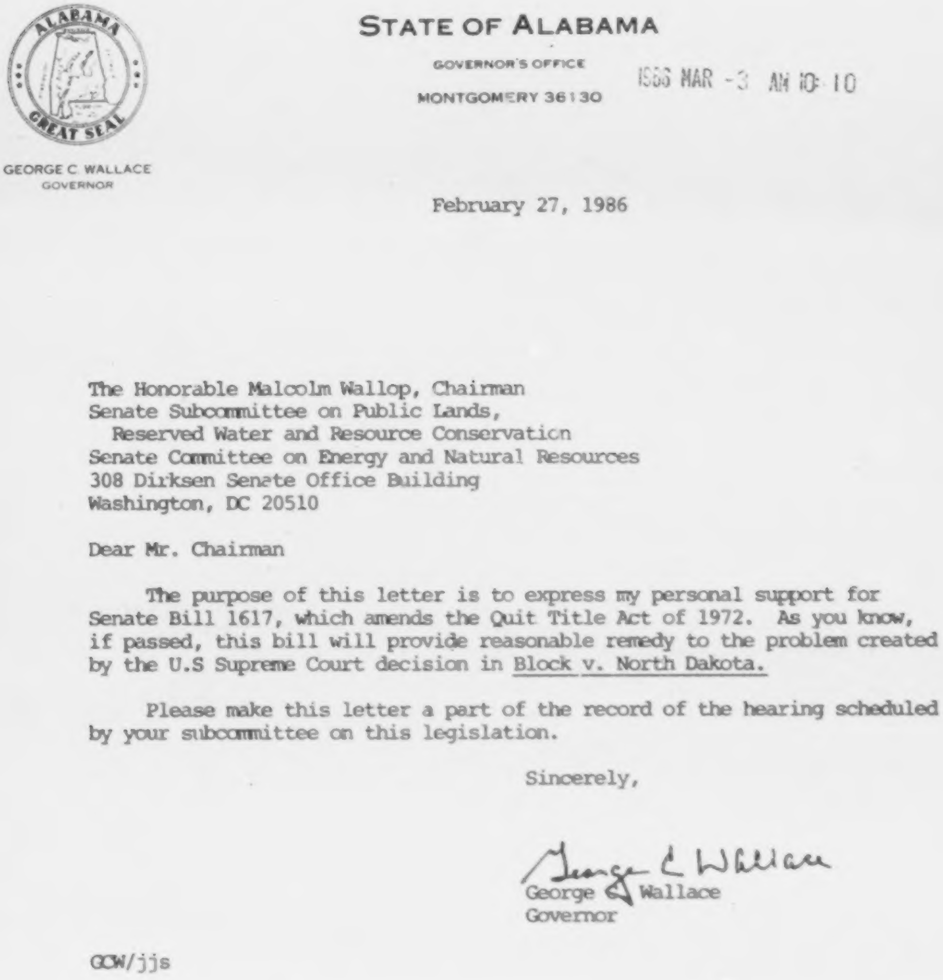
Senator **Wallop**. With that, I must call the subcommittee adjourned and I appreciate your patience with us.

Thank you.

[Whereupon, at 12:15 p.m., the hearing was adjourned.]

APPENDIX

Additional Material Submitted for the Record



STATE OF ALABAMA
GOVERNOR'S OFFICE
MONTGOMERY 36130

GEORGE C WALLACE
GOVERNOR

1986 MAR -3 AM 10 10

February 27, 1986

The Honorable Malcolm Wallop, Chairman
Senate Subcommittee on Public Lands,
  Reserved Water and Resource Conservation
Senate Committee on Energy and Natural Resources
308 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman

The purpose of this letter is to express my personal support for Senate Bill 1617, which amends the Quit Title Act of 1972. As you know, if passed, this bill will provide reasonable remedy to the problem created by the U.S Supreme Court decision in Block v. North Dakota.

Please make this letter a part of the record of the hearing scheduled by your subcommittee on this legislation.

Sincerely,

George C Wallace
George C. Wallace
Governor

GCW/jjs

STATE OF OKLAHOMA
OFFICE OF THE GOVERNOR
OKLAHOMA CITY

GEORGE NIGH
GOVERNOR

February 28, 1986

The Honorable Malcolm Wallop, Chairman
Senate Subcommittee on Public Lands,
Reserved Water and Resource Conservation
Senate Committee on Energy and Natural Resources
308 Dirksen Senate Office Building
Washington, D.C. 20510

VIA FEDERAL EXPRESS

Dear Mr. Chairman:

As you know, in 1983 the U.S. Supreme Court held in Block v. North Dakota that a land title claim asserted by a state against the federal government must be brought within the twelve year limitations period found in the Quiet Title Act of 1972. The effect of this decision is to limit the time period during which the federal government consents to be sued by a state to resolve conflicting land claims. Passage of the twelve year period without a state claim does not, however, lay to rest the underlying title dispute. This has detrimental implications for both the states' and the federal government's ability to effectively administer public lands.

Section 1617 would reverse that ruling by amending the Quiet Title Act of 1972 to declare the twelve year limitation period inapplicable to start claims. In 1984, the National Governors' Association endorsed the enactment of this type of legislation. As governors of states with continuing land title conflicts with the federal government, we support repeal of the limitations period as it applies to states. This is consistent with the long established common law principle that a statute of limitations does not run against the sovereign states.

We recognize, however, that the Department of Justice has objected to a total repeal because of its concern that federal programs would be disrupted by the continuing assertions of state claims. In response to the concerns which have been expressed, a compromise proposal has been developed. It is set out and explained in the attached letter from a number of state attorneys general to Attorney General Meese.

OKLAHOMA!
CARING AND SHARING!

Legislation is clearly necessary to redress the problems created by Block v. North Dakota. While we would prefer to see a simple repeal of the limitations period as set out in Section 1617, we believe that the compromise discussed above adequately addresses the states' concerns, and also responds to the problems with a repeal of the limitations period that were identified by the Department of Justice.

This letter expresses not only my own views, but the views of several other governors. We urge your Committee to act quickly on this issue. Thank you for your consideration of our views.

Sincerely,

Geo. Sinner

George Sinner
Governor

GN:lr

Enclosure

CONFERENCE OF
WESTERN ATTORNEYS GENERAL
THE COUNCIL OF STATE GOVERNMENTS

720 SACRAMENTO STREET, SAN FRANCISCO, CALIFORNIA 94108 (415) 986-3760

EXPRESS MAIL

February 7, 1986

Honorable Edwin Meese, III
Attorney General of the United States
Department of Justice, Room 519
10th and Constitution Avenue, N.W.
Washington, DC 20530

Dear Attorney General Meese:

Throughout your career in the executive branch, you have expressed a consistent concern for the constitutional federal system, and respect for the states as sovereigns having independent powers and responsibilities. As Attorneys General of public land states, we are particularly appreciative of that concern. Now we ask your support in solving a problem that has been especially frustrating to healthy federal-state relations — the states' inability to resolve title disputes with the United States over sovereign and trust lands.

The United States holds a third of our nation's land — over half the territory of the western states. Many of these holdings are checkerboarded with private or state-owned parcels. Early surveys were often incomplete or inaccurate, raising questions of ownership and access. It is inevitable, under these circumstances, that controversies arise over the right and title of state and federal claimants. The orderly development of these lands depends upon effective resolution of such disputes. When the federal Quiet Title Act was passed in 1972, many of us felt that a mechanism for solving such title disputes had been created. The Act authorizes the federal district courts to adjudicate disputed titles. It was carefully designed to avoid disruption of federal programs by permitting the government to retain possession of disputed lands and to compensate claimants if their claim proves valid. Finally, to avoid litigation over stale claims, it incorporated a 12-year limitation on the time allowed for suit, commencing on the date a claimant knew or should have known of a federal claim.

Few states thought at that time that the Department of Justice would assert this limitation against sovereign states, and for a number of years it wisely did not. Even fewer thought that the U.S. Supreme Court would buy such an argument. Sound public policy is reflected in the traditional common law rule that statutes of limitations are inapplicable to sovereigns. Indeed, in its earliest decisions, the Supreme Court refused to apply such limitation periods to states, holding "[We] cannot, without committing a great injustice, apply to this case the rules as to time, which govern courts of equity; in suits between individuals." (Rhode Island v. Massachusetts (1839) 38 U.S. (13 Pet.) 23, 24.)

The claims which states may have against the federal government are not, by their nature, mere disputes over property. State lands, for the most part, consist of the beds of navigable waters which came to the original 13 states by virtue of the Revolution, and to states later admitted under the constitutional equal footing doctrine. States hold these lands as an incident of their sovereignty. Other lands — such as state school lands — were granted to the states in partial compensation for the retention by the United States of vast acreages of public lands. They are held in trust for the support of the public schools.

Nevertheless, in 1983 the Supreme Court acquiesced in the arguments of the United States in Block v. North Dakota (1983) 461 U.S. 273, and held that states as well as private claimants are the subject to the 12-year statute. However, the court made it clear the interposition of the statute did not remove the cloud over disputed title, but merely prevented its judicial resolution.

This rule — under which the United States is free to initiate quiet title litigation at will but states are precluded — is inconsistent with both sound consitutional principles of federalism and the practical administration of the public lands. Successful assertion of this limitation does not resolve conflicting claims. It does not prevent states and federal claimants from issuing leases, granting easements or otherwise attempting to assert ownership interests. It merely precludes orderly, judicial resolution of such conflicts on the merits.

Legislation which would reverse Block v. North Dakota ruling and give states the same opportunity as the federal government to have their title claims adjudicated is pending in Congress [H.R. 2484 and S. 1617.] It is supported by the National Governors Association, the National Conference of State Legislators, the National and Western Associations of Attorneys General, and the Western States Land Commissioners Association. However, continued opposition of the Justice Department has thrown a barrier in the way of its passage. We are aware of your department's concerns that federal land programs not be disrupted by the assertion of stale claims. We continue to believe that the better course of action is to exempt the states from the statute of limitations outright in order to avoid the necessity for states to file premature lawsuits out of their concerns over expiration of the limitation period. In a spirit of compromise, however, we suggest a possible alternative: that the statute of limitations be retained, but that the special interests and problems of the states be recognized by addition of a specific notice provision making clear what federal action is needed to start the statute running.

Litigation over the nature of federal claims necessary to put a state on fair notice has been extensive, and the results have varied widely among courts. For instance, the Department of Justice has contended that one state was put on notice of a federal claim on the date of its admission to the union. The Ninth Circuit has affirmed a holding that participation in a joint federal-state reclamation project in 1899 was sufficient to start the statute running. In contrast, other district courts have held that the notice required must be clear, unequivocal, and directed to the state agency chargeable with administration of state lands.

The requirement of express, unequivocal notice of a federal claim directed to the appropriate agencies would constitute a fair standard for the states.

At the same time, states should be given a three-year "window" in which to examine areas of potential dispute and bring any actions needed to resolve title disputes not previously adjudicated.

We are mindful of the concerns of your department and federal land managers, and we believe that these amendments represent a desirable balance between state and federal interests. In seeking this balance, we have attempted to address those concerns by incorporating notice proposals urged by Assistant Attorney General Henry Habicht during congressional hearings in June 1984. We believe that the proposed amendments would eliminate confusion now extant among the federal circuits as to what constitutes proper notice to the states, while at the same time recognizing the role of states in our federal union. Above all, the amendments would let both states and federal agencies proceed in the orderly planning, administration and development of the public lands.

This letter is written on behalf of the Conference of Western Attorneys General, which authorized the proposed amendment language in December 1985. This letter and the proposed amendment have been reviewed by the member Attorneys General in our conference. As of this date, Attorneys General Brown (AK), Van de Kamp (CA), Jones (ID), Greely (MT), McKay (NV), Spaeth (ND), and McClintock (WY) have specifically authorized me to add their endorsement. In addition, Attorney Steve Clark of Arkansas, who is not a member of our conference, has added his endorsement to this letter.

A draft of our proposed amendment is attached. We respectfully request your favorable consideration of our proposal, and look forward to discussing the issue further at the meetings of the National and Western Associations of Attorneys General on March 3-5 of this year.

Sincerely,

David Frohnmayer

David Frohnmayer
Oregon Attorney General
Chair, Conference of Western Attorneys General

DF:pws:AG20-41
Attachment: draft amendment to 28 USC 2409a (f)

cc: Honorable Senator Malcolm Wallop
Representative Howard Berman
Assistant Attorney General Henry Habicht
Interior Secretary Donald Hodel

Honorable Hal Brown (AK)
Honorable Leulumoega S. Lutu (AS)
Honorable Robert K. Corbin (AZ)
Honorable John K. Van de Kamp (CA)
Honorable Duane Woodard (CO)
Honorable Richard B. Opper (GU)
Honorable Corinne W. A. Watanabe (HI)
Honorable Jim Jones (ID)
Honorable Michael T. Greely (MT)
Honorable Brian McKay (NV)
Honorable Paul G. Bardacke (NM)
Honorable Nicholas Spaeth (ND)
Honorable Rexford Kosack (CM)
Honorable David L. Wilkinson (UT)
Honorable Kenneth O. Eikenberry (WA)
Honorable Arch G. McClintock (WY)

AMENDMENTS TO THE FEDERAL QUIET TITLE ACT

Subjection (f) of subsection 2409a of title 28, United States Code, is amended by inserting after "United States" the following:

> except that in cases in which the plaintiff is a state and interests in sovereign or trust lands are at issue, it shall be deemed to have accrued on the date that clear and unequivocal written notice of the claim of the United States is given to that state's governor, attorney general and agency charged with administration of state lands.

Subsection (f) is further amended by adding after the second sentence:

> Notwithstanding the above, any civil action under this section may be brought by a state within three years of the enactment of this act with respect to claims which have not previously been finally decided on the merits.

ICIAL COMMITTEE FILE
LEASE RETURN

BRUCE BABBITT
GOVERNOR

OFFICE OF THE GOVERNOR
STATE HOUSE
PHOENIX, ARIZONA 85007

IN REPLY
REFER TO:

March 3, 1986

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
MAR 06 1986
WASHINGTON, D.C. 20610

The Honorable James McClure
Chairman, Energy and Natural Resources
Dirksen Senate Office Building
Room #358
Washington D.C. 20510

Dear Senator McClure:

The purpose of this letter is to express my support for S. 1617 which seeks to amend the Federal Quiet Title Act. Other supporters of this proposal include the National Governors' Association, the National Conference of State Legislators, the National Associations of Attorneys General, Conference of Western Attorneys General, Western Legislative Conference, and the Western States Land Commissioners Association.

My support of S.1617 is based principally upon its proposed exemption of states from the application of the 12-year statute of limitations. This would allow land disputes between the Federal government and the states to be resolved on the merits, thereby negating the United States Supreme Court's decision in Block v. North Dakota. As a result of the Block decision, the period of limitations effectively bars most title claims.

I urge your favorable consideration of this legislation.

Sincerely,

Bruce Babbitt
Governor

BB/bss

National Governors' Association

Lamar Alexander
Governor of Tennessee
Chairman

Raymond C. Scheppach
Executive Director

March 12, 1986

The Honorable Malcolm Wallop
Chairman
Subcommittee on Public Lands, Reserved
  Water and Resource Conservation
Senate Committee on Energy and Natural
  Resources
SD-308 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

As stated in the attached resolution, the National Governors' Association strongly supports amendments to the Quiet Title Act to declare its statute of limitations inappropriate to state claims.

This change is necessary to permit the States to secure orderly judicial resolution of title disputes with the United States which impede both State and Federal land administrators.

The Supreme Court in Block v. United States, 461 U.S. 273 (1983), held that the procedural limitations of the Quiet Title Act apply to the States, not to extinguish the State claim, but only to bar its assertion in court. This leaves the States with possibly valid title claims against the Federal Government, but with no basis for their orderly judicial resolution. As the Court noted, however, present law leaves the United States free to assert its title claims against the States, should it choose to seek judicial resolution. Otherwise, Federal land administrators can simply ignore the State claims. Indeed, the fact that the State cannot resort to litigation means that state efforts to secure an administrative resolution by negotiation with the Federal land managers may be compromised.

The Governors believe that this distortion of the balance between the Federal Government and the States under our federal system constitutes unwise public land policy and equally unwise legal policy.

I appreciate and support your efforts to advance quiet title amendments in the Senate, and urge early enactment of this important legislation.

Sincerely,

Anthony S. Earl

Governor Anthony S. Earl
Chairman
Energy and Environment Committee

Attachment

National Governors' Association

Lamar Alexander
Governor of Tennessee
Chairman

Raymond C. Scheppach
Executive Director

RESOLUTION OF THE NATIONAL GOVERNORS' ASSOCIATION

ENERGY AND ENVIRONMENT COMMITTEE

The state and federal governments share responsibility for orderly development and management of the nation's energy resources. As disputes over state or federal ownership of lands associated with these resources may preclude their development, it is in the interest of both parties to resolve such controversies.

The Quiet Title Act of 1972 applied a twelve-year statute of limitations to claims against the federal government regarding title to parcels of land. It also removed a prior prohibition, based on federal sovereign immunity, on such suits against the federal government. Under the principle that no statute of limitations runs against sovereign states, quiet title actions were brought by states against the federal government for resolution of title disputes.

The U.S. Supreme Court decision in Block v North Dakota (May 3, 1983), held that the twelve-year statute of limitations does apply to state claims. The effect of this decision is to leave unresolved state/federal title disputes. If the United States can successfully demonstrate that the state knew or should have known of a federal claim twelve years before the suit, the quiet title action would be dismissed without determination of its merits. The basic title issue will remain judicially unresolved.

Because energy and other resources frequently occur on publicly-owned land, the need to settle definitively federal/state title disputes is evident. Without final judgment, leases of parcels in question will be uncertain as to their rights to occupy, and granting of leaseholds may be stymied.

Congress is currently considering legislation amending the Quiet Title Act to declare the statute of limitations inapplicable to state claims. The Governors support such legislation as necessary to provide orderly land management and domestic energy resource development.

Adopted by Committee on Energy and Environment, February 27, 1984

HALL OF THE STATES · 444 North Capitol Street · Washington, D.C. 20001-1572 · (202) 624-5300

THE WESTERN STATES
LAND COMMISSIONERS ASSOCIATION

Alaska
Arizona
California
Colorado
Hawaii
Idaho
Louisiana
Minnesota
Montana
Nebraska
Nevada
New Mexico
North Dakota
Oklahoma
Oregon
South Dakota
Texas
Utah
Washington
Wisconsin
Wyoming

1807 13th Street
Sacramento, CA 95814

February 26, 1986

The Honorable James A. McClure
United States Senate
SD-361 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Senator McClure:

On March 4, 1986 the Subcommittee on Public Lands, Reserved Water and Resource Conservation will consider S 1617. These proposed amendments are of critical concern to state land management administrators. Both this Association and the Eastern Lands and Resources Council have adopted resolutions concerning the need for changes in the 12-year limitation on filing suit to quiet title. Copies of these resolutions are attached.

Sincerely,

ORIGINAL SIGNED BY JAMES F. TROUT

JAMES F. TROUT
Secretary

Attachment

cc: Tony Bevinetto
Mike Harvey
Ralph Miles, Pres. WSLCA
Stephen Zerangue, Pres. ELRC

THE WESTERN STATES
LAND COMMISSIONERS ASSOCIATION

Alaska *Arizona* *California* *Colorado* *Hawaii* *Idaho* *Louisiana*
Minnesota *Montana* *Nebraska* *Nevada* *New Mexico* *North Dakota* *Oklahoma*
Oregon *South Dakota* *Texas* *Utah* *Washington* *Wisconsin* *Wyoming*

RESOLUTION ENDORSING MEANS FOR THE PROMPT RESOLUTION OF STATE-FEDERAL LAND TITLE DISPUTES

WHEREAS, it is the responsibility of the members of this Association to plan for the orderly development and utilization of state lands; and

WHEREAS, numerous disputes over public land titles between the federal and state governments presently exist and even more will unquestionably be found in the course of further survey and development of public lands; and

WHEREAS, it is in the interest both of the states and the federal government that judicial resolution of such disputes take place to prevent serious administrative difficulty and delay in the utilization of the public lands of both federal and state sovereigns in the public interest; and

WHEREAS, in Block v. North Dakota, the United States Supreme Court held that such judicial resolution may be prevented by the application of the statute of limitations in the Federal Quiet Title Act; and

WHEREAS, the Court's holding has resulted in the prevention of judicial resolution of such disputes, leaving clouds on their titles and precluding effective planning for land and mineral development and conservation; and

WHEREAS, the application of a 12-year statute of limitations to state claims, many of which arose on admission to statehood in the nineteenth century, is inherently absurd; and

WHEREAS, legislation in the form of HR 2484, has been introduced in Congress to provide a means for the resolution of such title disputes by exempting the claims of states from the application of the 12-year limitation period in the Federal Quiet Title Act;

NOW, THEREFORE, BE IT RESOLVED, that this Association endorses the principle of exemption of sovereign states from the statute of limitations in quiet title actions against the United States, in order that such actions may be resolved on the merits, and finds that HR 2484 and any other legislation to that effect will benefit the members of the Western States Land Commissioners Association.

Passed this 22nd day of August, 1985.

B E Sommer
President

James T. Grant
Secretary

STATEMENT OF ROWENA ROGERS

LANDS COMMISSIONER, STATE OF COLORADO

ON BEHALF OF THE WESTERN STATE LAND

COMMISSIONERS ASSOCIATION

FOR THE SUBCOMMITTEE ON
PUBLIC LANDS, RESERVED WATER
AND RESOURCE CONSERVATION

COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

CONCERNING

S. 1617

ON

MARCH 4, 1986

STATEMENT OF ROWENA ROGERS

Mr. Chairman, members of the committee,

I am Rowena Rogers, President of the Colorado Board of Land Commissioners, representing at this time the Western State Land Commissioners Association. The Association is composed of the land managers of twenty-one states which range from Minnesota to Hawaii and from Alaska to Louisiana. The bond that unites us is our principal land management concern: trusteeship of those lands which by Congressional mandate are dedicated to public education. The archetype of these mandates is found in the North West Ordinance of 1807, the ordinance which gave birth to the great land grant universities of Ohio and its neighboring states.

Subsequent to passage of the Northwest Ordinance all states except Texas and Hawaii received land grants to support their school systems. In most of the central states these land grants have been absorbed even as has the public domain, but in the West they remain a valuable source of school support, tangible proof of the wisdom of earlier lawmakers who placed in the several enabling acts the mandate, expanded upon in the state constitutions, that certain sections in each state shall be managed for the support of the common schools.

Most of the testimony you have heard or will hear today is from professionals learned in law. All 1 can tell you about is the problems faced by the hands-on administrators of the granted lands in these twenty-one states,problems which have led to repeated and unanimous support for the amendment under discussion. I also can tell you about the chagrin that has been forced upon us by the suspicion that our government could care less about equity and fair play in its relationship with the states.

I have here a map of Wyoming's state trust lands. The blue squares vividly illustrate why state land patterns are described as checker-board. In Colorado the pattern is similar: think of the west half as being predominantly public domain and the east half as private land. And think, as I do sometimes, of Thomas Jefferson instructing his land officers to go out there and measure off the Louisiana purchase in square miles.

The fantastic thing is that by and large that mission has been accomplished at all and accomplished with workable results. My mother's father was a government surveyor in northern Colorado, what later became Rocky Mountain National Park. He was a Quaker and none of his survey lines are suspect. My own father was an outfitter with the Harvey Weed survey team in Montana. He wasn't a Quaker and it probably is just as well that the only lines he was responsible for were attached to mules. There are a lot of tall tales out West about the men who did the surveys and about the terrain they were supposed to have carried their chains across, but in fact it is amazing that more horrendous survey errors haven't been found. It also is fortunate for today's land administrators, because most of our excedrin headaches are related to challenges about where on the ground those lines and meridians are supposed to be, or to dealing with monuments which may not be where they first were located, or to seeking solutions for problems caused when rights have been granted third parties by the wrong agency for the wrong lands.

State land management agencies are small, they operate under jealous appropriation processes, and they are committed to returning the greatest possible amount to the schools. Our office has only twenty-nine employees, including the commissioners. We have ten thousand leases outstanding on the blue and the pale blue squares you would see on a Colorado map. We have an operating allowance of about 30 cents an acre and no prospect of more while the economy in our state is strained. There is no leeway, either for us or for our peers in other states, to engage in a frantic hunt for possible outstanding sources of litigation with the federal government. Neither is there merit in the prospect of squandering dollars needed for education on such a speculative venture.

Furthermore there is no need to go out and look for trouble when given time enough it will walk into our offices. Typically title problems are unearthed by third parties whose leasehold or other rights are affected. For instance in southwestern Colorado, where cadastral surveys cost a fortune, we thought we had an agreement with the federal land managers that, pending appropriations to complete the surveys, sections 16 and 36 would be accorded the status intended by Congress. For years we have issued leases on those properties. Along comes a smart gold miner who makes a strike and decides it will cost him less to claimstake the strike as public domain than it does to lease from the state and pay royalties. The state is stuck. The entire public sector loses and there is no avenue of relief for the state schools.

In Wyoming the Powder River Basin is being resurveyed. A row of section lines was found to be 1700 feet off. That's oil country up there, Known Geological Structure country by anyone's definition. What happens when, as it surely will, an oil well that for fifteen years has been paying royalties to the state is found to be on public domain? Easy answer: the federal agency has access to the courts to recover what could be a large royalty-plus-interest claim. Reverse the situation. Can the state exercise the same rights? Will the federal government satisfy a state claim unless it has to? How can these problems be settled fairly without equal access to the courts by both sides? In Colorado we found three producing federal leases on sections for which we are entitled to in lieu selections. Selections are based on equivalent values. The equivalent value on these oil properties is held to be the present depleted value of the resource. Without judicial recourse what protection is there for the school interest which Congress created?

I won't further belabor small illustrations of the problems which frustrate us. Few of them are earthshaking, and sophists easily can gloss over the dollar consequences as long as mineral revenues are shared with the states, but what is inexcusably and fundamentally troubling is the disregard for equity on the federal side. When we as a state are involved in ancient land ownership disputes with private owners we go to court because the issues need to be settled. We frequently lose. The law may support the state but judges are concerned with equity, with fair play. And it seems to us that the burden of equity lies heaviest on the strongest; that our sovereign government has the highest duty to be fair in its dealings with its member states. This statute of limitations exemption is not a major policy decision in land management. It is a major symbolic decision as to the relationship between the federal government and the states.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 25, 1986

The Honorable Malcolm Wallop, Chairman
Senate Subcommittee on Public Lands,
Reserved Water and Resource Conservation
Senate Committee on Energy and Natural Resources
308 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wallop:

The purpose of this letter is to place in the record Alaska's strong support for the provisions of S. 1617, which would exempt the claims of states from the statute of limitations in quiet actions against the United States currently found in 28 U.S.C. § 2409a. We hope the Congress will give serious consideration to this proposal to avoid the necessity for Alaska, over the next few years, to file a substantial number of lawsuits -- possibly numbering in the hundreds -- merely to protect our rights, even if there is no substantive dispute with the United States over the lands at issue.

Before turning to some of the specific controversies that Alaska will face in the future, it is helpful to examine the circumstances which may force Alaska to file such a large number of actions which would not be necessary but for the twelve-year statue of limitations contained in 28 U.S.C. § 2409a. Virtually all of these cases concern sovereign submerged lands underlying navigable waters. Under the equal footing doctrine of Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212 (1845), states own the submerged lands underlying navigable waters within their boundaries. Prior to a state's admission to the Union, the United States holds such lands in territories in trust for any future state or states which might be created out of those territories. Shively v. Bowlby, 152 U.S. 1 (1894). Congress made this principle expressly applicable to the Territory of Alaska in the Alaska Right-of-Way Act, 30 Stat. 409, 43 U.S.C. § 942-1 (now repealed; formerly codified at 48 U.S.C. § 411). Section 1 of the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. note preceding section 24, provides in part that Alaska "is declared admitted into the Union on an equal footing with the other States in all respects whatever."

Notwithstanding the general equal footing doctrine principle, applicable to all states under the Constitution, and its express extension and application to Alaska in the Alaska Right-of-Way Act and the Statehood Act, the United States has taken the position that certain pre-statehood actions by the federal executive branch defeated Alaska's equal footing doctrine rights to certain submerged lands and that title to those lands remains with the federal government. For the most part, these assertions by the federal government relate to pre-statehood executive withdrawals and reservations which were still in effect on the date of statehood. This position has been taken despite a specific Congressional finding that many of these "withdrawals are either excessive in size or totally unnecessary." H.R. Rep. No. 624, 85th Cong., 1st Sess. 8 (1957). These withdrawals and reservations totaled "approximately 95 million acres -- more than one-fourth the total area of Alaska." Id., p. 6.

Initially, disputes arose only when there was a particular conflict over utilization of the lands or resources at issue. See, e.g., United States v. Alaska, 423 F.2d 764 (9th Cir.), cert. denied, 400 U.S. 967 (1970); United States v. City of Anchorage, 437 F.2d 1081 (9th Cir. 1971). More recently, however, the United States has become more assertive in stating its position that pre-statehood executive withdrawals or reservations defeated Alaska's equal footing doctrine rights, and that title to sovereign submerged lands remains with the United States, even in the absence of any specific dispute over resource utilization.

For example, in Solicitor's Opinion M-36911, 86 I.D. 151 (1978), the Solicitor of the Department of the Interior concluded that Public Land Order ("PLO") 82 defeated Alaska's equal footing doctrine rights to submerged lands underlying navigable waters on Alaska's North Slope. PLO 82 withdrew almost 50 million acres "from sale, location, selection and entry under the public-land laws of the United States" and reserved the minerals in those lands "for use in connection with the prosecution of [World War II]." It was revoked, presumably as "either excessive in size or totally unnecessary" as described by Congress, in 1960, one year after Alaska was admitted to the Union. Nonetheless, the Solicitor concluded that the mere fact that PLO 82 was in existence on the date of statehood, whether necessary or not, defeated Alaska's equal footing doctrine rights to any sovereign submerged lands underlying navigable waters located anywhere in the almost 50 million acres constituting Alaska's North Slope.

This same argument is increasingly being made with respect to other pre-statehood withdrawals and reservations, notwithstanding that most of them may have been "either excessive in size or totally unnecessary." The pertinent point here is that, once the United States gives notice to Alaska that it attributes such effect to a pre-statehood withdrawal or reservation, the twelve-year statute of limitations under 28 U.S.C. § 2409a begins to run. As a result, even in the absence of any particular dispute between Alaska and the United States over the lands at issue or the resources therein, Alaska must bring suit within 12 years merely to ensure that we do not waive the opportunity to protect our rights.

The United States may argue that the twelve-year statute of limitations began to run on the date of statehood and that any such claims by Alaska at this late date are time-barred. Of course, that would mean that the twelve-year period expired in 1971, the year before the United States waived its sovereign immunity to quiet title actions with the enactment of 28 U.S.C. § 2409a in 1972. However, subsection (f) of that statute provides: "Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." In light of the constitutional equal footing doctrine principle and its express statutory application to Alaska, the general proposition that the term "public lands" used in these pre-statehood executive withdrawals and reservations does not generally include tide and submerged lands (see, e.g., Mann v. Tacoma Land Co., 153 U.S. 273 (1894)), and the general rule that pre-statehood federal actions are presumed not to affect a state's equal footing doctrine rights (see generally Montana v. United States, 450 U.S. 544 (1981)), we believe a court will not find that Alaska "knew or should have known of the claim of the United States" until such a claim is made with respect to a particular pre-statehood executive withdrawal or reservation.

Regardless of the merits of either contention with respect to notice, however, the fact remains that litigation will result. From Alaska's perspective, we will have no alternative but to initiate such litigation in order to protect our interests even if there is no substantive dispute over the lands at issue.

Moreover, Congress created a host of new federal conservation units in the Alaska National Interest Conservation Act, P.L. 96-487, 94, Stat. 2371. Those conservation system units consist of "public lands," which are defined as "Federal lands" which, in turn, are defined as "lands the title to which is in the United States after the date of enactment this Act;" "land" means "lands, waters, and interests therein." See Section 102 (1), (2) and (3). This may or may not indicate a federal claim to all submerged lands underlying navigable waters within the conservation system units created. Specific claims to submerged lands would appear to be made with respect to the Alaska Maritime National Wildlife Refuge, the Arctic National Wildlife Refuge, the Kenai National Wildlife Refuge, the Kodiak National Wildlife Refuge and the Yukon Delta National Wildlife Refuge, all of which are described as "including lands, waters, interests, and whatever submerged lands, if any, were retained in Federal ownership at the time of statehood." See section 303 (1), (2), (4), (5) and (7).

If the statute of limitations in 28 U.S.C. § 2409a is not amended to exempt state claims, Alaska will have no alternative but to file suit with respect to each of these areas in order to protect our rights. If an exception is made for state claims, however, such lawsuits would not be necessary until a specific conflict arose between the state and the federal government.

We would prefer to avoid unnecessary litigation with the federal government if at all possible. An amendment exempting state claims from the twelve-year statute of limitations in 28 U.S.C. § 2409a would enable us to avoid litigation in the vast majority of cases. We have found that, where resource conflicts do not necessitate a determination of title, Alaska and the United States have been able to work cooperatively to jointly address mutual land management concerns irrespective of title. Examples include the activities of the Alaska Land Use Council, activities related to cooperative planning for the Bristol Bay region, and planning activities related to the Kenai River Special Management Area. While the effect of forcing Alaska to litigate ownership of submerged lands with the federal government on these and similar cooperative efforts cannot be measured at this time, our experience as been that adversarial proceedings generally do not foster cooperation.

For all of the foregoing reasons, and in the spirit of cooperative federalism, we urge favorable consideration of S. 1617.

Sincerely,

Harold M. Brown
Attorney General

HMB:GTK:dlm

cc's: see attached

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

STEVE CLARK
ATTORNEY GENERAL

(501) 371-2007

February 10, 1986

The Honorable Dale Bumpers
U.S. Senator
3229 Dirksen Building
Washington, D.C. 20510

Re: Amendments to the Federal Quiet Title Act

Dear Senator Bumpers:

Enclosed are letters I received from Attorney General John Van De Kamp of California. Since the information deals with the above referenced amendments I wanted to share it with you as a member of the Senate Committee on Public Lands.

I join with General Van De Kamp in his concern and concur with his proposed solution to the states problem.

If I can furnish you further information please call on me.

Sincerely,

STEVE CLARK
Attorney General

JSC:ldc

State of California
WASHINGTON OFFICE OF THE GOVERNOR
303 HALL OF THE STATES
444 NORTH CAPITOL STREET N.W
WASHINGTON D.C. 20001
(202) 347-6881

GEORGE DEUKMEJIAN
GOVERNOR

September 18, 1985

The Honorable Howard L. Berman
U.S. House of Representatives
1022 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Berman:

Governor Deukmejian supports HR 2484 which would exempt states from the statute of limitations applicable to quiet title actions against the United States.

Please let me know if I can be of assistance with your efforts to move this legislation.

Sincerely,

Karen Spencer
Director

KS/gbh

cc: California Congressional Delegation
The Honorable Pete Wilson
The Honorable Alan Cranston

State of Connecticut

JOSEPH I. LIEBERMAN
ATTORNEY GENERAL

Office of The Attorney General

October 25, 1985

Honorable John K. Van de Kamp
Attorney General
State of California
Department of Justice
3580 Wilshire Boulevard, Room 800
Los Angeles, CA 90010

Dear General ~~Van~~ John de Kamp:

I am in receipt of your letter concerning federal quiet title legislation. This legislation which was introduced this year would overturn the Supreme Court decision in Block v. North Dakota, (1983) 461 U.S. 273.

As I stated in my letter in 1983, the State of Connecticut has not encountered any state-federal controversies under the Federal Quiet Title Act. However, my position on the proposed legislation has not changed. I will write letters to the Connecticut Congressional delegation urging them to support HR-2484.

I hope that this bill will find the necessary support in Congress this year. If I can be of further assistance to you on this issue or any other matter, please contact me.

Sincerely,

Joseph I. Liberman
Attorney General

JIL:RFK:ljb

State of Kansas

Office of the Attorney General

2nd Floor, Kansas Judicial Center, Topeka 66612

Robert T. Stephan
Attorney General

Main Phone (913) 296-2215
Consumer Protection 296-37[illegible]
Antitrust 296-[illegible]

July 2, 1985

The Honorable Dan Glickman
United States Representative
2435 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Glickman:

I am writing to you in regard to H.R. 2484 which has been reintroduced by Representatives Berman of California and McCollum of Florida. This legislation is for the purpose of exempting states from the 12-year statute of limitations in the federal Quiet Title Act. Such statutes should not be applicable to sovereign states and, as I have been advised that you are chairing the subcommittee concerned with this matter, I am writing to you in the hope you might hold a hearing on this legislation as soon as possible.

This legislation is being supported by the National Governor's Association, the National Conference of State Legislatures, the Interstate Oil Compact Commission, the West States Land Commissioners and the National Assocation of Attorneys General. Last year there were hearings from the subcommittee on Administrative Law and Governmental Relations of House Judiciary, but it was not reported out of subcommittee.

Your assistance in this very important matter will be appreciated.

Very truly yours,

Robert T. Stephan

Robert T. Stephan
Attorney General

RTS:dp
cc: The Honorable John K. Van De Kamp
Attorney General of California

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

STANLEY D. STEINBORN
Chief Assistant Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL

LANSING
48913

December 16, 1985

The Honorable John K. Van de Kamp
Attorney General of California
1515 K Street, Suite 600
Sacramento, California 95814

RE: Federal Quiet Title Act Legislation: H.R. 2484

Dear Attorney General Van de Kamp:

Thank you for your letter of August 22, 1985 requesting our comments on the above mentioned legislation. The Michigan Department of Natural Resources has primary responsibility for state land matters. I have consulted with its Lands Division and the Land Resource Programs Division, both of which administer state lands and applicable regulation, concerning the extent of their interest in the pending legislation. I have also inquired as to the degree of impact of the decision in *Block v North Dakota* on Michigan. It appears quite clear that the State of Michigan has significant interest in having the proposed legislation passed. Therefore, we will express strong support for its passage.

It is indeed unfortunate that the Supreme Court decision in *Block v North Dakota*, 461 U.S. 273 (1983) dealing with the limitations period provided in 28 USCA § 2409a(f) did not recognize the special position in which states often find themselves as a result of title questions dating back to the acquisition of statehood. My staff has reviewed this decision with our Department of Natural Resources in order to determine the actual or potential affects of the *Block* decision. First, the Lands Division which is primarily responsible for administration of the vast holdings of state land was consulted. Secondly, the Land Resource Programs Division which is primarily responsible for the submerged lands ownership of the State of Michigan. Both of these divisions are currently involved in "informal" title disputes with the federal government. Examples of some of these disputes include situations where land shown on the original government surveys as being marshland or wetland have subsequently been drained and the bottomlands have been exposed. The federal government sometimes considers them to be lands omitted from the original survey and thus upon resurvey may claim title to those lands. The federal government has also claimed title to certain islands in the Great Lakes based on their allegations that the islands existed and were unpatented before Michigan achieved statehood. Another source of title disputes arises over ownership of lands used in aid to navigation. The federal government claims interests in such lands. While the State of Michigan recognizes the paramount rights of the federal government to use state lands in aid of navigation, several situations have arisen where those claims have provided a basis for the federal government to expand their claimed interests beyond what is necessary for navigation.

There are other circumstances too in which actual or potential title conflicts with the federal government have or may arise. I would note, however, in direct response to federal assertions mentioned in your letter, that neither of these divisions of the Department of Natural Resources have been made aware of any disputes impacting on federal wildlife refuge areas. For the above stated reasons, I am pleased to provide the above information to you and hope it will be useful in your efforts in support of the Federal Quiet Title Act Legislation. Additionally, I will be taking action to inform the subcommittee members, our congressional delegation and Governor Blanchard of the importance of the legislation to the State of Michigan.

Very truly yours,

Frank J. Kelley

FRANK J. KELLEY
Attorney General

cc: Attorney General Meese

STATE
OF
MONTANA
ATTORNEY GENERAL
MIKE GREELY
JUSTICE BUILDING 215 N SANDERS HELENA MONTANA 59620
TELEPHONE (406) 444-2026

28 February 1986

Senator John Melcher
1123 Dirksen
Senate Office Building
Washington DC 20520

Re: S. 1617--Amendments to Federal Quiet Title Act

Dear Senator Melcher: John

During the previous Congress I wrote to you expressing my support for legislation which would exempt states from the 12-year statute of limitations on federal quiet title claims. Since that legislation was not adopted and similar legislation has been introduced in this Congress, I would like to renew my support for the legislation and underscore its importance for Montana.

I understand that S. 1617, authored by Senator Wallop of Wyoming, has been set for hearing before the Senate Subcommittee on Public Lands, Reserved Water, and Resource Conservation of which you are a member at 10:00 a.m., March 4.

In the recent United States Supreme Court case of Block v. North Dakota, 461 U.S. 273 (1983), the Court held that the 12-year limitation period in 28 U.S.C. § 2409a(f) was applicable to claims of sovereign states against the federal government. Thus, if the United States can successfully contend that a state either knew or should have known of a federal claim 12 years prior to suit, the action will be dismissed without any determination of its merits.

Most of the disputed claims in western states concern land that purported to transfer at statehood. The federal government has routinely averred in such cases that the state had notice of the federal claim at statehood. Thus the application of a 12-year statute of limitations to these claims bars any consideration of the claim.

Dismissal on the grounds of statute of limitations will not, however, quiet title to the property in the United States. The title dispute will remain unresolved and federal-state title claims will remain in limbo. This result seems contrary to the original purpose of the Quiet Title Act, enacted in 1972.

Unless remedial legislation is adopted it is quite probable that the states will not have an opportunity to litigate the merits of their disputed claims. Such legislation has been introduced in the form of S. 1617, a copy of which is enclosed. I strongly solicit your support for this measure or similar legislation.

Montana has not made extensive use of the Quiet Title Act. However, the facts involved in Block v. North Dakota are easily analogized to Montana. There the state claimed title to a portion of the Little Missouri River based on navigability of the stream at statehood. The federal government denied navigability and further stated that in any event the state "knew or should have known" of the federal claim at the time of statehood. The Supreme Court agreed with the latter contention, applied the 12-year statute of limitations to North Dakota, and vacated judgment.

The Supreme Court reached its result because it could find no congressional intent to treat states differently than private parties for purposes of applying the statute of limitations in the Quiet Title Act. That of course can be remedied by passage of legislation such as S. 1617.

Very truly yours,

Mike

MIKE GREELY
Attorney General

cc: Honorable John K. Van De Kamp
Attorney General of California

Dennis Hemmer, Commissioner
Montana Department of State Lands

Attorney General of New Mexico

PAUL BARDACKE
Attorney General

P.O. Drawer 1508
Santa Fe, New Mexico 87504
505-827-6000

KAY MARR
STEPHEN WESTHEIMER
Deputy Attorneys General

February 21, 1986

Honorable Pete V. Domenici
United States Senator
SD-434
Washington, D.C. 20510

Re: S. 1617 -- Amendments to the Federal Quiet Act

Dear ~~Senator Domenici~~ Pete:

I am writing to urge your support for H.R. 1617. This bill would remove the twelve year statute of limitations in disputes between the States and the United States over land titles. I wrote to you previously supporting an identical bill. With S. 1617 scheduled for hearings before the Senate Subcommittee on Public Lands, Reserved Water and Resource Conservation, it is an appropriate time to again urge support.

Sincerely,

PAUL BARDACKE
Attorney General

Attorney General of New Mexico

PAUL BARDACKE
Attorney General

P.O. Drawer 1508
Santa Fe, New Mexico 87504
505-827-6000

KAY MARR
STEPHEN WESTHEIMER
Deputy Attorneys General

February 21, 1986

Honorable Jeff Bingaman
United States Senator
Hart Building, Room 502
Washington, D.C. 20510

Re: S. 1617 -- Amendments to the Federal Quiet Act

Dear ~~Senator Bingaman~~ Jeff:

I am writing to urge your support for H.R. 1617. This bill would remove the twelve year statute of limitations in disputes between the States and the United States over land titles. I wrote to you previously supporting an identical bill. With S. 1617 scheduled for hearings before the Senate Subcommittee on Public Lands, Reserved Water and Resource Conservation, it is an appropriate time to again urge support.

Sincerely,

PAUL BARDACKE
Attorney General

PB/vq

February 19, 1985

HONORABLE Howard Berman
United States Representative
Capitol Hill Office
1022 Longworthhouse Office Bldg.
Washington, DC 20515

Dear Representative Berman:

We really appreciated your efforts in the session passed to gain passage of H.R. 3917, a bill to exempt states from the 12-year statute of limitations.

We would again like to call on you and your associates to re-introduce this same legislation in the present session.

You may recall, your legislation has broad support from the Western Attorneys General, the National Association of Attorneys General, the National Governor's Association, the National Association of State Legislators and the Western States Land Commissioners Association.

Sincerely,

R.E. Lommen, President
Western States
Land Commissioners Association
6th Floor, Capitol Building
Bismarck, North Dakota 58505

REL/ch

February 19, 1985

HONORABLE Malcolm Wallop
United States Senator
451 Russell Office Bldg.
Washington, DC 20510

Dear Senator Wallop:

We really appreciated your efforts in the session passed to gain passage of S.B. 2750, a bill to exempt states from the 12-year statute of limitations.

We would again like to call on you and your associates to reintroduce this same legislation in the present session.

As you may recall, your legislation has broad support from the Western Attorneys General, the National Association of Attorneys General, the National Governor's Association, the National Association of State Legislators and the Western States Land Commissioners Association.

Sincerely,

R.E. Lommen, President
Western States
  Land Commissioners Association
6th Floor, Capitol Building
Bismarck, North Dakota 58505

REL/ch

THE ATTORNEY GENERAL
STATE OF UTAH
DAVID L. WILKINSON
ATTORNEY GENERAL

PAUL M. TINKER
DEPUTY ATTORNEY GENERAL
DALLIN W. JENSEN
Solicitor General
FRANKLYN B. MATHESON
Senior Assistant Attorney General

WILLIAM T. EVANS, Chief
Human Resources Division
DONALD S. COLEMAN, Chief
Physical Resources Division
STEPHEN G. SCHWENDIMAN, Chief
Tax & Business Regulation Division
EARL F. DORIUS, Chief
Governmental Affairs Division
PAUL M. WARNER, Chief
Litigation Division

10 April 1985

Honorable Edwin Meese, III
Attorney General of the United States
Department of Justice, Room 5119
10th & Constitution Avenue, N.W.
Washington, D. C. 20530

Dear General Meese:

This is to congratulate you on your recent confirmation as Attorney General and to bring to your attention one of the many issues of concern to your office and to the states under our federal system.

Your position, and that of President Reagan, in support of federalism and state sovereignty, has been appreciated by all of the states, but particularly the western states. Under the present administration the Department of Interior has made substantial strides in satisfying the long overdue school land obligations of the federal government. That department, counseled and represented by the Department of Justice, has been constructive and affirmative in its dealings with states over the public lands.

However, there is one issue which has not been resolved and we respectfully request your consideration of it. The U. S. Supreme Court held, in Block v. North Dakota, 75 L.Ed.2d 840 (1983), that the twelve-year statute of limitations applicable to quiet title actions against the federal government applies to suits brought by states as well as private parties. This holding has caused serious concern to the western states and other states throughout the country for the following reasons:

1. It jeopardizes the settlement of longstanding controversies between states and the federal government.

2. It runs contrary to the federal administration's announced desire to work with the states in a spirit of cooperative federalism.

236 STATE CAPITOL • SALT LAKE CITY, UTAH 84114 • TELEPHONE 801-533-5261

3. It seriously hampers the orderly administration of lands when ownership is disputed between sovereign states and the federal government.

4. It contravenes a long-accepted principle that statutes of limitations do not run against the claims of sovereigns.

The Supreme Court holding does nothing to resolve these often longstanding controversies. It merely presents a procedural block to their effective resolution. Consequently, lessees of disputed property who are in doubt as to their obligations may be subjected to duplicative claims to rent and royalties from both sovereigns.

Legislation providing a narrow exemption from the statute of limitations for sovereign states was introduced last year with the support of the Attorneys General of 36 states, Governor Deukmejian of California, the National Association of Attorneys General, the Conference of Western Attorneys General, the Western States Land Commissioners, and the National and Western Governors Associations, as well as the Western Conference of Legislators and the National Conference of Legislators. Although it received a hearing in the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary last June, it was opposed by the Department of Justice and was not reported out.

This legislation will be reintroduced this year by Senator Malcolm Wallop of Wyoming and Congressman Howard Berman of California. We have already initiated talks with Assistant Attorney General F. Henry Habicht and his acting deputy, Roger Marzoulla, in the hopes that the legitimate claims of states can be recognized and that the Federal Quiet Title Act can be made an effective vehicle for their resolution. We respectfully request your consideration and support of this proposal.

I am sending a copy of this letter to Mr. Habicht, who has been thoroughly professional and forthright in his dealings with us in the past.

Very truly yours,

David L. Wilkinson
DAVID L. WILKINSON
Attorney General

DLW:rma

cc: F. Henry Habicht

June 19, 1985

Mr. James F. Trout
Assistant Executive Officer
State Lands Commission
1807 13th Street
Sacramento, California 95814

Dear Mr. Trout:

In answer to your inquiry concerning the application of the Federal Quiet Title Act to state-federal controversies involving land in Texas, I am not aware of any controversy in which the Act poses a problem.

As you probably already know, the State of Texas retained all of its public lands when it was admitted to the union. The percentage of federally owned land in Texas is low. To date, there have been only occasional boundary questions which have been resolved by negotiation and settlement.

Although there are no pressing controversies involving the Quiet Title Act, I do contend that the law was never intended to apply to disputes involving the states. You may count on my firm support for HR 2484.

Sincerely,

Garry Mauro

Garry Mauro
Commissioner

GM:SS:gs

Garry Mauro
Commissioner
General Land Office

Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78701
(512) 475-2071

OFFICE OF THE
ATTORNEY GENERAL

June 20, 1985

STATE LANDS COMMISSION

Mr. James F. Trout
Assistant Executive Officer
State Lands Commission
1807 - 13th Street
Sacramento, California 95814

Dear Mr. Trout:

Your June 5, 1985 letter to Washington Land Commissioner Brian Boyle has been referred to me. I am familiar with the effort to amend the Federal Quiet Title Act, having discussed the subject with Jan Stevens on numerous occasions.

The potential for federal-state property disputes in the State of Washington with the twelve year statute of limitations is substantial given the State's ownership of tidelands on Puget Sound, ownership to the beds of navigable lakes like Lake Washington and Lake Union which are located in the City of Seattle and ownership to the beds of rivers like the Columbia River. This State also has a substantial federal land grant trust ownership. Many of these lands abut or are surrounded by federal ownership. While a federal-state property dispute could arise in a number of situations, to date we have not encountered a dispute in which the federal government has asserted the Quiet Title Act statute of limitations. As such, our situation is supportive of the position that the proposed amendments to the Act will not open the litigation floodgates.

On the other hand, we are fully supportive of the notion that, when these disputes do arise, the federal government and the states ought to be able to litigate the claims on their merits.

We certainly wish you luck in your endeavors. We have previously arranged for correspondence with our Congressional delegation from Washington State Attorney

Ken Eikenberry Attorney General
Temple of Justice, Olympia, Washington 98504-0521

General Ken Eikenberry. If we can be of further assistance, please let us know.

Very truly yours,

NIXON HANDY
Senior Assistant
Attorney General
(206) 753-5318

NH:dl

cc: Honorable Brian J. Boyle

By Mr. WALLOP (for himself, Mr. ANDREWS, Mr. ABDNOR, Mr. SIMPSON, Mr. LAXALT, Mr. BURDICK, and Mr. MELCHER):

S. 1617. A bill to provide for more effective management of lands of the United States which are subject to conflicting claims or disputes, and to require the Secretary of the Interior to report annually thereon; to the Committee on Energy and Natural Resources.

MANAGEMENT OF U.S. LANDS IN DISPUTE

● Mr. WALLOP. Mr. President, today I am introducing legislation that will clarify the status of lands which are either in the public domain or in State ownership, and that will require the Secretary of the Interior to report on negotiations for settlement of disputes concerning lands claimed by the States and administered by the Department of the Interior.

This legislation will pave the way toward resolving the long-standing cloud over federally claimed lands that lie primarily within the western public land States by permitting judicial resolution of their status without respect to the time the States filed claims.

Upon admission to the Union, all Western States were granted substantial amounts of land to be held in trust and administered for the benefit of the common schools and other public institutions. Each grant of lands made to the Western States by the U.S. Government expressly required that the States were to serve as trustees of the lands so granted for the exclusive benefit of those beneficiary institutions. Many State supreme courts and the U.S Supreme Court, in reviewing the various act of admission, have consistently held that States have a sacred duty to properly manage and protect the lands granted to them by the U.S. Government.

While Congress and the courts have placed this obligation on individual States, a current provision of the Federal Quiet Title Act eliminates, in certain limited situations, the ability of the States to fulfill their trust obligations.

In effect, the current Federal Quiet Title Act of 1972, as a result of the recent ruling by the U.S. Supreme Court in Block versus North Dakota, requires States, as well as private parties, to file lawsuits within 12 years limitation of the time they knew or should have known there was a Federal claim to the land in question. In some cases this time has been interpreted to be the date of a State's admission to the Union. While it may be reasonable to apply this restriction to private parties to prevent a flood of litigation on old claims, it results in barring the States from fulfilling their stringent obligations which Congress itself imposed upon them when they were admitted to the Union. Certainly, it is anomalous for Congress to require States to serve as trustees of State land and at the same time establish a quiet title barrier which prevents the States from fulfilling their congressionally mandated trust responsibilities.

For example, as the trustee of over 4 million acres of State-owned lands, Wyoming is convinced that it is impossible adequately to administer and protect its vital interests and obligations under the current language of the Federal Quiet Title Act. Under existing court interpretations Wyoming would have to review over 3 million diverse Federal actions in order to insure that State trust lands were not being claimed by the Federal Government.

In addition, Wyoming would have to continually monitor all ongoing Federal actions including all surface and mineral leasing, grants of rights-of-way, patent applications, land exchanges, withdrawals, special use permits, timber sales, and governmental resurveys, to name a few. Given Wyoming's checkerboard pattern of State land ownership, this is a particularly difficult task. Public lands and the public's interest therein deserve better management than that, both in the interest of efficiency and equity.

Mr. President, this legislation would end this conflict by amending the Quiet Title Act of 1972 to exempt sovereign States from the 12-year statute of limitations for filing suit against the Federal Government over disputed land claims. It would also require the direct involvement of the Department of the Interior in the settlement of State-Federal public land title disputes, which might not be concluded without the option of being able to rely on ultimate judicial resolution. Clear title to real property is essential to any State effort to properly manage and protect State-owned trust lands. Likewise, the resolution of these title disputes would also be necessary for management and protection of Federal lands since State claims remain alive even if there is no consent to sue. The inability to judicially resolve State-Federal title disputes simply makes effective land and resource management even more complex and difficult than it already is.

As a final note, I would like to add that a large and geographically diverse group of States filed amicus curiae briefs in the relevant Block versus North Dakota case: Alabama, Alaska, Arizona, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Louisiana, Michigan, Minnesota, Montana, Nevada, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, Washington, and Wyoming.

The widespread support for this legislation is indicated by the resolutions of the following organizations: National Governors Association, National Association of Attorneys General, Western Attorneys General, National Conference of State Legislatures, Western States Land Commissioners Association, and Eastern Land and Resources Council.

Mr. President, I ask unanimous consent that resolutions of each of these groups be presented in the Congressional Record. I would also ask unanimous consent that the bill be printed in the Record immediately following this statement.

There being no objection, the material was ordered to be printed in the Record, as follows:

S. 1617

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. It is the purpose of this legislation to obtain more effective management of public lands by providing for the speedy resolution of intergovernmental title disputes involving lands to which the United States asserts title, which interfere with effective administration or disposition of public lands.

Sec. 2. The Secretary of the Interior shall report by July 1, 1986, and annually thereafter, to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs on the status of negotiations for the settlement of any claims by States to lands administered by the Department of the Interior.

Sec. 3. Subsection (f) of section 2409a of title 28, United States Code, is amended by inserting ", except for an action commenced by a State," after "section" and by inserting after the first sentence the following: "Any civil action under this section by a State may be commenced regardless of when such action accrued." Such subsection is further amended by striking out "Such" and inserting in lieu thereof "For purposes of this subsection, an".

National Governors Association Committee on Energy and Environment, February 27, 1984

The state and federal governments share responsibility for orderly development and management of the nation's energy resources. As disputes over state or federal ownership of lands associated with these resources may preclude their development, it is in the interest of both parties to resolve such controversies.

The Quiet Title Act of 1972 applied a twelve-year statute of limitations to claims against the federal government regarding title to parcels of land. It also removed a prior prohibition, based on federal sovereign immunity, on such suits against the federal government. Under the principle that no statute of limitations runs against sovereign states, quiet title actions were brought by states against the federal government for resolution of title disputes.

The U.S. Supreme Court decision in *Block v North Dakota* (May 3, 1983), held that the twelve-year statute of limitations does apply to state claims. The effect of this decision is to leave unresolved state/federal title disputes. If the United States can successfully demonstrate that the state knew or should have known of a federal claim twelve years before the suit, the quiet title action would be dismissed without determination of its merits. The basic title issue will remain judicially unresolved.

Because energy and other resources frequently occur on publicly-owned land, the need to settle definitively federal/state title disputes is evident. Without final judgment, lessees of parcels in question will be uncertain as to their rights to occupy, and granting of leaseholds may be stymied.

Congress is currently considering legislation amending the Quiet Title Act to declare the statute of limitations inapplicable to state claims. The Governors support such legislation as necessary to provide orderly land management and domestic energy resource development.

National Association of Attorneys General, June 28, 1983

Whereas, the federal and state governments coexist as sovereigns in our federal union; and

Whereas, the disputes over title to lands between federal and state sovereigns have caused uncertainty and impeded the orderly resolution of title disputes in the states; and

Whereas, it is in the interests of both states and the United States that such uncertainties be decided on their merits; and

Whereas, the U.S. Supreme Court has recently held that such resolutions may be precluded by the application of the statute of limitations to the claims of sovereign states against the United States; and

Whereas, it is an accepted and cardinal principle of law that no statute of limitations should run against a sovereign state; and

Whereas, if states are precluded by the statute of limitations from asserting claims against the United States, a cloud will nevertheless remain over the disputed property, thus preventing the resolution of title and seriously impeding the process of leasing and orderly utilization of the mineral resources upon such land; and

Whereas, the Supreme Court has suggested that in the absence of a solution by Congress, states having claims against the federal government could assert them by issuing leases to federally-claimed lands, asserting title to such lands and engaging in other activities calculated to confuse and impede the orderly management of such lands; and

Whereas, such controversies should be resolved by litigation on the merits; and

Whereas, it is within the power of Congress to provide for such orderly solutions by legislation,

Now, therefore, be it resolved, that this Association requests Congress to enact legislation to permit sovereign states to bring such actions in quiet title against the United States to obtain resolution of such actions on the merits, free from the procedural obstacles created by the statute of limitations.

Western Attorneys General Resolution

Whereas, the federal and state governments coexist as sovereigns in our federal union; and

Whereas, the disputes over title to lands between federal and state sovereigns have caused uncertainty and impeded the orderly resolution of title disputes in the states; and

Whereas, it is in the interest of both states and the United States that such uncertainties be decided on their merits; and

Whereas, in *Block v. North Dakota*, the U.S. Supreme Court held that such resolutions may be prevented by the application of the statute of limitations to the claims of sovereign states against the United States; and

Whereas, it is an accepted and cardinal principle of law that no statute of limitations should run against a sovereign state; and

Whereas, if states are precluded by the statute of limitations from asserting claims against the United States, a cloud will nevertheless remain over the disputed property, thus preventing the resolution of title and seriously impeding the process of leasing and orderly utilization of the mineral resources upon such land; and

Whereas, such controversies should be resolved by litigation on the merits; and

Whereas, it is within the power of Congress to provide for such orderly solutions by legislation; and

Whereas, H.R. 2917[1] would provide for such a solution by exempting the claims of sovereign states from application of the 12-year statute of limitations in the federal Quiet Title Act;

Now therefore be it resolved, that this Association requests Congress to enact H.R.

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[1] Identical to our companion bill, H.R. 2484, in this Congress.

3917 to permit sovereign states to bring actions in quiet title against the United States and to obtain resolution of such actions on the merits, free from the procedural obstacles created by the statute of limitations; and

Be it further resolved, that the secretary of this Association be directed to transmit copies of this resolution to the appropriate Committees of Congress, the U.S. Attorney General and the Secretary of Interior.

National Conference of State Legislatures

The National Conference of State Legislatures supports legislation amending the Quiet Title Act to declare the statute of limitations inapplicable to state claims. Such legislation is necessary to provide orderly land management and domestic energy resource development.

The Quiet Title Act of 1972 applied a twelve-year statute of limitation to claims against the federal government regarding title to parcels of land. It also removed a prior prohibition, based on federal sovereign immunity, on such suits against the federal government. Under the principle that no statute of limitations runs against sovereign states, quiet title actions were brought by states against the federal government for resolution of title disputes.

The U.S. Supreme Court decision in *Block v. North Dakota* (May 3, 1983), held that the twelve-year statute of limitations does apply to state claims. The effect of this decision is to leave unresolved state/federal title disputes. If the United States can successfully demonstrate that the state knew or should have known of a federal claim twelve years before the suit, the quiet title action would be dismissed without determination of its merits. The basic title issue will remain judicially unresolved.

The state and federal governments share responsibility for orderly development and management of the nation's energy resources. As disputes over state or federal ownership of lands associated with these resources may preclude their development, it is in the interest of both parties to resolve such controversies. Therefore, it is important to amend the Quiet Title Act to prevent the application of the statute of limitations to state claims.

The Western States Land Commissioners Association, January 1984

Whereas, the Federal and State Governments constitutionally coexist as sovereigns in the Federal Union; and

Whereas, numerous disputes over public land titles between the Federal and State Sovereigns presently exist and even more will unquestionably be found in the course of further survey and utilization of public lands; and

Whereas, it is in the interest both of the States and the Federal Government that such disputes be promptly and finally decided judicially to prevent serious administrative difficulty and delay in the orderly administration and utilization of the public lands of both Federal and State Sovereigns as may be required in the public interest; and

Whereas, in *Block v. North Dakota*, the United States Supreme Court held that such judicial resolution may be prevented by the application of the time limitations in the existing Quiet Title Act procedures to claims of the states, notwithstanding the accepted and cardinal principle of law that statutes of limitations do not run against claims by a sovereign state; and

Whereas, the Court also held that the application of the limitations on suit did not extinguish the underlying dispute, but that it would still continue; and

Whereas, only action by the Congress can now provide for the needed resolution of these disputes and permit the process of orderly administration and use of the sovereign lands in dispute; and

Whereas, a bill presently before the Congress (H.R. 3917) provides for the needed solution by exempting all title disputes between the two sovereigns, the State and the Federal Government from the application of the 12-year limitation period in the Federal Quiet Title Act;

Now therefore be it resolved, that this Association requests Congress to enact H.R. 3917 to permit sovereign states to bring actions in quiet title against the United States and to obtain resolution of such actions on the merits, free from the procedural obstacles created by the statute of limitations; and

Be it further resolved, that the Secretary of this Association be directed to transmit copies of this resolution to the appropriate Committees of Congress, the U.S. Attorney General and the Secretary of the Interior.

Eastern Lands and Resources Council

April 11, 1985

Whereas, disputes over title to lands between federal and state sovereigns have caused uncertainty and impeded the orderly resolutions of title disputes in the states and;

Whereas, it is in the interest of all states and the United States that such uncertainties be decided on their merits; and

Whereas, the U.S. Supreme Court held in *Block v. North Dakota* that the orderly resolution of title disputes between states and the federal government may be prevented by the application of the statute of limitations to the claims of sovereign states against the United States; and

Whereas, it is an accepted and cardinal principle of law that no statute of limitations should run against a sovereign state; and

Whereas, even though states are precluded by the statute of limitations from asserting claims against the United States, a cloud will nevertheless remain over the disputed property, thus preventing the resolution of title and seriously impeding the process of leasing and orderly utilization of the natural resources upon such land; and

Whereas, such controversies should be resolved by litigation on the merits; and

Whereas, the ELRC is composed or representatives of many of the Eastern States where these types of disputes may arise; and

Whereas, such legislation would achieve this result by exempting sovereign states from application of the 12 year statute of limitations in the Federal Quiet Title Act in disputes with the United States over land titles;

Now therefore be it resolved, that this Council recommends that each of the member states urges its Congressional delegation, the appropriate members of Congress, the United States Attorney General and the Secretary of the Interior to support enactment of this Federal legislation.●

KENNETH CORY
Controller of the State of California
SACRAMENTO, CALIFORNIA 95805

March 3, 1986

The Honorable Malcolm Wallop
Chairman, Subcommittee on Public Lands,
Reserved Water and Resource Conservation
Committee on Energy and Natural Resources
United States Senate
SD-308 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I have enclosed my statement on S. 1617 for inclusion in the record of the hearing before your Subcommittee on March 4, 1986.

Thank you for your courtesies in this matter.

Cordially,

Ken Cory

KENNETH CORY
Chairman, California State Lands
Commission

Enclosure

STATEMENT OF KENNETH CORY,

CONTROLLER, STATE OF CALIFORNIA

FOR THE SUBCOMMITTEE ON

PUBLIC LANDS, RESERVED WATER, & RESOURCE CONSERVATION,

COMMITTEE ON ENERGY AND NATURAL RESOURCES,

U.S. SENATE,

ON S. 1617

TO EXEMPT STATES FROM THE STATUTES OF LIMITATIONS

APPLICABLE TO QUIET TITLE ACTIONS

AGAINST THE UNITED STATES

MARCH 4, 1986

Mr. Chairman, I am grateful for this opportunity to submit testimony in support of S. 1617 "To provide for more effective management of lands of the United States which are subject to conflicting claims or disputes, and to require the Secretary of the Interior to report annually thereon."

This amendment of the Quiet Title Act, deals with a judicially reopened area of conflict between state and federal land administrators. While it may be of more critical importance to those in the West, where federal public lands take up so much of our total area, it is important to all states. The bill provides merely an opportunity for the state and federal land administrators to use the federal courts to resolve title disputes. It does not give new life to old disputes which have been resolved.

As Chairman of the California State Lands Commission, responsible for administration of the state's sovereign lands, I have become all to keenly aware of this problem. Inaccurate or incomplete surveys, the wavering of river courses, questions whether a given stream was "navigable" in 1850 or not -- these are examples of the kind of questions that can arise. If there is available a prompt and efficient legal remedy, disputes are short-lived and quickly disposed of by trial or settlement. The lack of a demonstrably clear title in either state or federal land agency greatly hinders both in dealing with the disputed land and adjoining areas.

In 1972, enactment of the Quiet Title Act provided for the adjudication of both state and private title claims against the federal government. Under that Act, for a decade, we were able to use the courts readily for a resolution of irreconcilable title disputes, regardless of when the dispute arose.

Later, the Department of Justice changed signals -- the states could be permitted to litigate only those claims which the state "knew or should have known" were in existence for not more than twelve years before the litigation was brought. And indeed, while the Quiet Title Act does contain a limitation of twelve years on claims to be litigated, like other statutory time limitations, it had been thought to be inapplicable to the states as sovereigns. For as you may know, it has been the rule since time immemorial that time limitations do not apply to sovereigns and, under the Constitution, the states are sovereign within their sphere.

That exception to the general rule has a practical base. It would be highly improper if a state administrator, resonsible for the administration of trust lands, and without authority to give those lands away, could accomplish the same purpose by merely looking the other way while they were taken. It seems unreasonable that a state admitted in 1850 should not now be permitted to quiet title to a river bed by litigation because its officials "knew or should have known" that it was navigable in 1850, and its bed conveyed to the state as public lands. And of course, knowledge of such a claim of title was academic in the face of the total lack of any real remedy until 1972, when the Quiet Title Act was passed.

The Department of Justice carried its technical interpretation of the Quiet Title Act successfully to the Supreme Court. Although the Court did not find a legislative intent to end the traditional immunity of sovereigns, itsustained the department's assertion that this procedural bar included the states although the limitation did not affect the validity of the underlying claim. The Court did, however, note explicitly that the matter was easily remediable by legislative action.

And so we are here. Brilliant though the technical expertise of the Department of Justice lawyers may have been, the practical result is that Congress must provide a basis for resolving these conflicts so the federal or state land administrators can perform their resonsiblities or else title will remain forever in dispute.

The states ask that sense be restored to the statute, as it was before this legalistic exercise began. As I indicated before, that action would create no disputes or revive any settled claims, it would surely avoid the friction between state and federal agencies which is inevitable under the existing situation. It would reduce, not add to, the workload of the state and federal land agencies. It might, of course, shift some of that workload to the Department of Justice, but that transferred cost is hardly a reason for continuing the confusion.

National Conference of State Legislatures

444 North Capitol Street, N.W.
Suite 203
Washington, D.C. 20001
202/624-5400

President David E. Nething
Majority Leader
North Dakota Senate

Executive Director
Earl S. Mackey

STATEMENT OF

THE HONORABLE ROBERT W. O'DONNELL
MAJORITY WHIP, PENNSYLVANIA
HOUSE OF REPRESENTATIVES
CHAIR, NATIONAL CONFERENCE OF STATE LEGISLATURES
LAW AND JUSTICE COMMITTEE

SUBMITTED TO THE
SUBCOMMITTEE ON PUBLIC LANDS
OF THE
U.S. SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

REGARDING
AMENDMENTS TO THE QUIET TITLE ACT
REQUIRED TO RESOLVE STATE/FEDERAL
LAND DISPUTES

MARCH 4, 1986

Denver Office: 1050 17th Street • Suite 2100 • Denver, Colorado 80265 • 303/623-7800

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM STATE REPRESENTATIVE ROBERT W. O'DONNELL, FROM PENNSYLVANIA. I SERVE AS MAJORITY WHIP OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES AS WELL AS CHAIR OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES' LAW AND JUSTICE COMMITTEE. NCSL IS THE OFFICIAL REPRESENTATIVE OF THE NATION'S SEVEN THOUSAND STATE LEGISLATORS, AND I SPEAK TODAY ON BEHALF OF NCSL, WHICH HAS ENDORSED S. 1617. STATE LEGISLATORS FROM ACROSS THE COUNTRY AT NCSL'S ANNUAL MEETINGS AND STATE-FEDERAL ASSEMBLIES HAVE FOR THE PAST TWO YEARS UNANIMOUSLY ENDORSED LEGISLATION TO AMEND THE FEDERAL QUIET TITLE ACT IN ORDER TO FACILITATE THE ORDERLY JUDICIAL RESOLUTION OF STATE/FEDERAL LAND DISPUTES.

STATE-FEDERAL LAND DISPUTES ARE AN IMPORTANT IF RARELY RAISED INTERGOVERNMENTAL ISSUE. MOST IMPORTANT STATE-FEDERAL LAND TITLE DISPUTES HAVE INVOLVED SUBMERGED LANDS, WHICH MAY CONTAIN SIGNIFICANT MINERAL DEPOSITS OR OTHER VALUABLE RESOURCES, BUT THERE HAVE BEEN OCCASIONAL DISPUTES REGARDING ONSHORE LANDS. BEYOND THEIR ECONOMIC IMPORTANCE, THESE DISPUTES INVOLVE IMPORTANT ISSUES OF STATE SOVEREIGNTY.

THE POSSIBILITY OF UTILIZING JUDICIAL MEANS OF RESOLVING MANY STATE-FEDERAL LAND DISPUTES WAS CUT OFF BY THE U.S. SUPREME COURT DECISION IN BLOCK V. NORTH DAKOTA, 75 L. ED 2D 840 (1983). IN BLOCK, THE COURT HELD THAT THE TWELVE-YEAR

LIMITATION PERIOD OF THE 1972 QUIET TITLE ACT APPLIED TO STATE CLAIMS. THE NATIONAL CONFERENCE OF STATE LEGISLATURES AND OTHER GROUPS REPRESENTING STATE OFFICIALS ARE NOW URGING THE PASSAGE OF S. 1617 TO LIFT THE APPLICATION OF THE QUIET TITLE ACT'S LIMITATIONS ON A STATE'S ABILITY TO ASSERT ITS CLAIMS.

THE QUIET TITLE ACT OF 1972 WAIVED FEDERAL SOVEREIGN IMMUNITY FOR SUITS DISPUTING FEDERAL LAND TITLE CLAIMS. QUIET TITLE ACTIONS WERE SUBSEQUENTLY BROUGHT AGAINST THE FEDERAL GOVERNMENT BY SEVERAL STATES. MANY STATES LITIGATED ON THE THEORY THAT THE ACT'S LIMITATION PERIOD DID NOT RUN AGAINST SOVEREIGN STATES. IN THIS CONNECTION, THE STATES DEPENDED ON THE RULE OF COMMON LAW THAT STATE CLAIMS ARE EXEMPT FROM GENERALLY-WORDED STATUTES OF LIMITATIONS.

ON MAY 3, 1983, HOWEVER, THE U.S. SUPREME COURT IN BLOCK v. NORTH DAKOTA DECIDED THAT THE TWELVE-YEAR LIMITATIONS PERIOD WAS A LIMITATION ON THE FEDERAL CONSENT TO SUIT, AND APPLIES TO STATE CLAIMS. THE EFFECT OF THIS DECISION IS TO LEAVE MANY STATE-FEDERAL LAND DISPUTES WHOLLY UNRESOLVED. IF THE UNITED STATES CAN SUCCESSFULLY DEMONSTRATE THAT A STATE KNEW OR SHOULD HAVE KNOWN ABOUT A FEDERAL CLAIM TWELVE YEARS BEFORE THE SUIT AND FAILED TO CONTEST IT, THE QUIET TITLE ACTION IS TO BE DISMISSED WITHOUT A DETERMINATION ON THE MERITS.

THE BIND IN WHICH THE STATES FIND THEMSELVES IS ILLUSTRATED BY THE FACTS AND HOLDING IN BLOCK.

NORTH DAKOTA FILED SUIT UNDER THE QUIET TITLE ACT AGAINST THE UNITED STATES, CLAIMING TITLE TO THE BED OF THE LITTLE MISSOURI RIVER ON THE GROUNDS THAT THE RIVER WAS NAVIGABLE IN 1899 WHEN NORTH DAKOTA WAS ADMITTED TO THE UNION AND THAT UNDER THE EQUAL-FOOTING DOCTRINE, THE RIVERBED BELONGS TO THE STATE.

THE UNITED STATES CLAIMED TITLE AS A RIPARIAN LANDOWNER ON A NON-NAVIGABLE RIVER.

THE TRIAL COURT HELD THAT THE TWELVE-YEAR LIMITATION PERIOD OF THE QUIET TITLE ACT DID NOT APPLY TO THE STATES AND ENTERED JUDGMENT IN FAVOR OF THE STATE. THE COURT OF APPEALS AFFIRMED.

THE UNITED STATES SUPREME COURT REVERSED, HOLDING THAT THE TWELVE-YEAR LIMITATION APPLIED TO THE SOVEREIGN STATES BECAUSE IT WAS A LIMITATION ON THE CONSENT TO SUE, NOT A LIMITATION TERMINATING THE CLAIM. THIS MADE INAPPLICABLE THE GENERAL RULE OF STATUTORY CONSTRUCTION THAT A STATUTE OF LIMITATIONS OUGHT NOT TO BE ASSUMED TO APPLY TO SOVEREIGN STATES UNLESS THE STATUTE IS WORDED TO SPECIFICALLY APPLY TO THE STATES. THE SUPREME COURT HELD THAT GIVEN THE HISTORY OF THE SOVEREIGN IMMUNITY OF THE UNITED STATES, AN EXCEPTION THEREFROM CANNOT BE LIGHTLY ASSUMED OR LIBERALLY CONSTRUED. THE COURT READ THE LEGISLATIVE HISTORY OF THE QUIET TITLE ACT TO INDICATE NO SPECIAL INTENT TO EXEMPT THE STATES FROM OPERATION OF THE QUIET TITLE ACT'S LIMITATION ON THE WAIVER OF THE FEDERAL IMMUNITY. THE COURT FOUND NO TENTH AMENDMENT OR EQUAL FOOTING DOCTRINE VIOLATION INASMUCH AS DISMISSAL OF THE ACTION DOES NOT ELIMINATE THE STATE'S TITLE CLAIM, AND THEREBY INVOLVES NO TAKING WITHOUT JUST COMPENSATION IN VIOLATION OF THE 5TH AMENDMENT.

THE BLOCK CASE WAS NOT ISOLATED. JUST AS NORTH DAKOTA WAS CHARGED WITH NOTICE OF A FEDERAL CLAIM DATING FROM 1955, SO UTAH WAS CHARGED BY THE FEDERAL GOVERNMENT WITH NOTICE OF FEDERAL CLAIMS TO UTAH LAKE, DATING FROM ITS ADMISSION

TO THE UNION. CALIFORNIA WAS SIMILARLY INFORMED THAT AN 1899 RECLAMATION PROJECT CONSTITUTED NOTICE OF A FEDERAL CLAIM ON THE YUBA RIVER.

THE LIMITATIONS ON A STATE'S ABILITY TO ASSERT ITS CLAIMS, UNDER THE QUIET TITLE ACT AS INTERPRETED BY THE COURT, HAVE UNDESIRABLE POLICY CONSEQUENCES. BY SO LIMITING THE CLAIMS OF SOVEREIGN STATES, THE ACT ALLOWS THE NEGLIGENCE OF PUBLIC OFFICIALS TO RESULT IN THE LOSS OF PUBLIC PROPERTY. THE CURRENT LAW ALSO IGNORES THE PRACTICAL PROBLEMS OF PROVIDING NOTICE OR CONSTRUCTIVE NOTICE OF A LAND CLAIM TO A STATE AS OPPOSED TO AN INDIVIDUAL LANDOWNER. BECAUSE POTENTIAL FEDERAL AND STATE LAND CLAIMS MIGHT BE EXTENSIVE, ESPECIALLY IN WESTERN STATES, FOR THE MOST PART THEY ARE DORMANT AND UNRECOGNIZED. FOR THESE REASONS IT SIMPLY IS NOT PRACTICAL IN MANY CASES FOR THE STATES TO IDENTIFY ALL POSSIBLE CONFLICTING CLAIMS WITHIN A TWELVE YEAR PERIOD, OR INDEED, UNTIL FEDERAL OR STATE PLANNING ACTION INVOLVING PARTICULAR AREAS AWAKENS THE DORMANT DISPUTE.

THE QUIET TITLE ACT, AS INTERPRETED BY THE SUPREME COURT, HAS THE EFFECT OF UNDERMINING THE CERTAINTY OF LAND TITLES. THE AMENDMENTS TO THE QUIET TITLE ACT, PROPOSED IN S. 1617, WILL ON THE OTHER HAND ALLOW THESE DISPUTES TO BE SETTLED IN A COURT OF LAW. THE FEDERAL GOVERNMENT DOES NOT ACQUIRE TITLE TO LAND SIMPLY BECAUSE THE STATES ARE BLOCKED PROCEDURALLY BY THE QUIET TITLE ACT'S LIMITATION PERIOD FROM CONTESTING THE FEDERAL CLAIM IN COURT. A JUDICIAL RESOLUTION OF TITLE CLAIM DISPUTES WOULD ENCOURAGE THE ECONOMIC DEVELOPMENT AND ENVIRONMENTAL PROTECTION OF THESE LANDS BY SETTLING, FINALLY, THE QUESTION OF OWNERSHIP. AND, TITLE CLAIMS, ESPECIALLY TO SOVEREIGN LANDS LOCATED IN RIVERBEDS AND TIDELANDS, MUST BE CLEAR IF THE NATURAL RESOURCES AND SOURCES OF ENERGY FOUND THERE ARE TO BE MANAGED EFFECTIVELY.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THIS ISSUE HAS BEEN IGNORED TOO LONG. I URGE YOU TO REPORT FAVORABLY S. 1617 AT THE EARLIEST OPPORTUNITY.

ELRC
EASTERN LANDS
AND RESOURCES
COUNCIL

March 3, 1986

The Honorable Malcom Wallop
358 Sen. Dirkson Office Bldg.
Washington, D.C. 20510

Dear Senator Wallop:

The Eastern Lands and Resources Council is an organization of public lands executives and managers concerned with public lands management information, resource development and protection issues. The Council supports the amendment to the Quiet Title Act which is being heard in your subcommittee this week and passed the enclosed resolution at our meeting in Washington last year.

We ask for your favorable consideration of S.1617.

Sincerely,

Rodney W. Sando
Rodney W. Sando
Vice President for Legislation

RWS:SW:cp
Enc.
c.c. Executive Council

PURPOSE
THE PURPOSE OF THIS COUNCIL SHALL BE TO PROVIDE AN OPPORTUNITY OF THE SHARING OF INFORMATION AMONG EASTERN STATES PUBLIC LAND MANAGERS OF THE UNITED STATES.

ELRC RESOLUTION RE QUIET TITLE ACT

RESOLUTION ENDORSING LEGISLATION TO PERMIT RESOLUTION OF STATE-FEDERAL PROPERTY DISPUTES ON THE MERITS

WHEREAS, disputes over title to lands between federal and state sovereigns have caused uncertainty and impeded the orderly resolutions of title disputes in the states and:

WHEREAS, it is in the interest of all states and the United States that such uncertainties be decided on their merits; and

WHEREAS, the U.S. Supreme Court held in Block v. North Dakota that the orderly resolution of title disputes between states and the federal government may be prevented by the application of the statute of limitations to the claims of sovereign states against the United States; and

WHEREAS, it is an accepted and cardinal principle of law that no statute of limitations should run against a sovereign state; and

WHEREAS, even though states are precluded by the statute of limitations from asserting claims against the United States, a cloud will nevertheless remain over the disputed property, thus preventing the resolution of title and seriously impeding the process of leasing and orderly utilization of the natural resources upon such land; and

WHEREAS, such controversies should be resolved by litigation on the merits; and

WHEREAS, the ELRC is composed of representatives of many of the Eastern States where these types of disputes may arise, and

WHEREAS, such legislation would achieve this result by exempting sovereign states from application of the 12 year statute of limitations in the Federal Quiet Title Act in disputes with the United States over land titles;

NOW THEREFORE BE IT RESOLVED, that this Council recommends that each of the member states urges its Congressional delegation, the appropriate members of Congress, the United States Attorney General and the Secretary of the Interior to support enactment of this Federal legislation.

Passed April 11, 1985

Eastern Lands &
Resources Council

EASTERN LANDS AND RESOURCES COUNCIL

ELRC is an organization of State officials who are involved in the management of State lands, natural resources, and associated records. The Council's goal is to foster communication and strengthen professional relationships, both among its members and with Federal officials in related fields.

The concept behind ELRC emerged in October 1983 at a meeting of State and Federal officials in Little Rock, Arkansas. Elected, appointed, and career professionals from eleven States attended the meeting. They agreed upon the need for a single representative organization to gather and distribute information on public policy, and provide a forum for contacts with Federal agencies and the Congress.

A COMMON VOICE

In June 1984, ELRC held its first organizational meeting in Rosslyn, Virginia. Members agreed that the new organization would provide a common voice for the thirty-one eastern States in their contacts with Federal land and natural resource managers.

The Council's by-laws state the purpose in full:

— to encourage the development of sound Federal and State public land management policies;
— to educate other States, associations, and individuals on the problems of eastern States on how Federal, State and local policies, statutes, laws and ordinances affect the day-to-day management of our public lands;
— to promote the general policies of conservation and management of public lands consistent with the Nation's health, safety and welfare;
— to foster open communications and coordination with resource development industries and associations, and with recreation and conservation organizations;
— to plan and implement strategy to achieve the goals of good, sound public land management, which may include such activities as education, legislation and general communication.

CRITICAL ISSUES

ELRC members have identified nearly twenty-five issues of common concern. They include:

- Public land management policies and planning (State and Federal level).
- Public land records management (preservation, computerization, analysis of systems in place).
- Minerals management (leasing procedures, revenue accounting, joint State-Federal audits, future plans).
- State/Federal in-lieu of taxes payments.
- Tax-reverted land processing.
- Timber management.
- Submerged/sovereignty lands management (leasing policies, fee structures for leases and easements).
- Public Land acquisition (appraisals, disposals, land exchanges).
- Federal/State issues (farm management policies, revenue sharing, coordination between ELRC and Congress.)

STANDING COMMITTEES

Review and analysis of these and other issues along with recommendations on ELRC's course of action, are the province of ELRC's four standing committees:

- Resolutions
- Legislation
- Records and Systems Management
- Information Exchange

EASTERN LANDS AND RESOURCES COUNCIL

ELRC is an organization of State officials who are involved in the management of State lands, natural resources, and associated records. The Council's goal is to foster communication and strengthen professional relationships, both among its members and with Federal officials in related fields.

Member States:

Alabama
Arkansas
Florida
Louisiana
Maine
Maryland
Michigan
Minnesota
Mississippi
New York
Ohio
Pennsylvania
Tennessee
Virginia
West Virginia
Wisconsin

Officers:

President
Stephen Zerangue
Division of State Lands
Louisiana

1st Vice President
Steven Gauger
State Board of Commissioners of Public Lands
Wisconsin

2nd Vice President
Rodney W. Sando
State Land Bureau
Minnesota

3rd Vice President
Roland Harmes, Jr.
Lands Division, Department of Natural Resources
Michigan

Secretary/Treasurer
Hon. William J. "Bill" McCuen
Secretary of State
Arkansas

(Over)

DAVID S. MONSON
2D DISTRICT, UTAH

COMMITTEE ON
SCIENCE AND TECHNOLOGY

COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION

SELECT COMMITTEE ON
CHILDREN, YOUTH, AND FAMILIES

Congress of the United States
House of Representatives
Washington, DC 20515

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125 SOUTH STATE
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March 3, 1986

The Honorable Malcolm Wallop
206 Senate Russell Office Building
Washington, D.C. 20510

Dear Senator Wallop:

As the House sponsor of the companion bill to S. 1911, I am particularly interested in the progress of this legislation. I would like to encourage you and the committee you chair to favorably consider this important piece of legislation. The entire Utah congressional delegation, the Utah Governor, as well as local and national conservation groups support this bill.

The dual purpose of S. 1911 is to allow more economic development in the Salt Lake City area as well as the designation of a large wetlands reserve in the northern part of the State of Utah.

I appreciate the important work you do for the United States. If there is any question on this issue which I may answer please contact me.

Sincerely,

David S. Monson

David S. Monson
Member of Congress

DSM:rgp

1986 MAR -4 AM 10:47

STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114

NORMAN H. BANGERTER
GOVERNOR

February 27, 1986

Senator Malcolm Wallop
Chairman, Public Lands, Reserved Water
and Resource Conservation Subcommittee
Senate, Energy and Natural Resources Committee
U.S. Senate
Washington, D.C. 20510

Dear Senator Wallop:

I would like to encourage your support for Senate Bill 1911 (house companion bill H.R 3846) that will be coming before your committee on March 4. This bill is designed to clear the way for a land exchange between Upland Industries Corporation, a subsidiary of Union Pacific Corporation, and the Utah State Division of Wildlife Resources.

Passage of this bill will allow the U. S. General Services Administration to release certain reversionary restrictions on a 150-acre parcel of land that Utah State Division of Wildlife Resources would like to exchange for 3,500 acres of Union Pacific land in northwest Weber County and other selected sites in northern Utah. The exchange of these lands will allow the Division of Wildlife Resources to trade land that has essentially lost its wildlife value for the acquisition of land that is rich in wildlife and related interests.

The proposed development on the 150 acres in Salt Lake County will be valuable to the county's economy by providing needed jobs and by generating additional revenue in the area. In addition, the newly acquired wildlife lands will help mitigate for wetland habitat losses from the rising Great Salt Lake, public stream access losses from private land closures and game winter range losses from housing and industrial development. These acquisitions will provide additional recreation opportunities and tourism for the people of Utah.

This is one of those rare proposals where there are no foreseeable objections and everyone involved appears to be a winner. I would appreciate your consideration and support to help this bill through Congress.

Sincerely,

Norman H Bangerter

Norman H. Bangerter
Governor

NHB/dch

STATE OF UTAH
NATURAL RESOURCES
Wildlife Resources

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
William H. Geer, Division Director

1596 West North Temple • Salt Lake City, UT 84116-3154 • 801-533-9333

1986 MAR -3 PM 12:08

February 28, 1986

Honorable Senator Malcolm Wallop
Chairman, Public Lands, Reserved Water
and Resource Conservation Subcommittee
Senate, Energy and Natural Resources Committee
U.S. Senate
Washington, D.C. 20510

Dear Senator Wallop:

The Utah Division of Wildlife Resources (UDWR) has recently been advised that the hearing on Senate Bill 1911 (companion bill H.R. 3846) will come before your subcommittee on March 4. The intent of the bill is to release certain reversionary clauses from a 150-acre portion of 1,280 acres of land near Salt Lake City that was conveyed to the State of Utah Fish and Game Commission by the General Services Administration in the early 1950s. This land was to be used exclusively for the preservation and enhancement of wildlife. Since then, industrial and other development has rendered the area to be of little or no wildlife value.

There is a proposal--pending this legislation--to exchange the 150 acres of land with land currently owned by Upland Industries, a subsidiary corporation of the Union Pacific Corporation. Based on appraised value, the exchange will generate up to 3,500 acres of pristine habitat abundant with wildlife. Most of the exchange will be for wetlands to help offset the loss of more than 300,000 acres of wetlands to the rising levels of the Great Salt Lake. In addition, the acquired lands will provided needed area for public nonconsumptive and hunting uses. The remaining exchange values will be used to acquire public streams access and big game habitat in northern Utah.

As the managing agency for the wildlife in Utah, the Utah Division of Wildlife Resources would appreciate your consideration and support in helping this vital land exchange to take place.

Sincerely,

William H Geer

William H. Geer
Director

CITY OF LAKE CHARLES
P. O. BOX 1178
LAKE CHARLES, LOUISIANA 70602-1178
(318) 491-1200

LEGAL DEPARTMENT

March 20, 1986

Sen. Malcolm Wallop, Chairman
Senate Subcommittee on Public
Lands, Reserve Water and
Resource Conservation
Washington, D.C. 20515

Re: S. 2031

Dear Senator Wallop:

At the hearing of your Subcommittee on Tuesday, March 4, 1986, the Department of Interior testified on Senate Bill No. 2031 and suggested that the Subcommittee clarify two matters before considering this legislation: a) obtain verification that property was donated by local government for the establishment of Chennault as a permanent military installation; and b) the Department questioned the advisability of this legislation due to the potential affect it may have on the government ownership of the minerals in or under the affected properties.

A) Donation of Property to United States:

According to records maintained by the Calcasieu Parish Policy Jury (Parish), the Parish donated 1,908 acres to the United States for the establishment of Chennault as a permanent Air Force base. Attached are several exhibits verifying these transactions. The following is a brief summary of the information contained in Parish records:

1) Donation of Lake Charles Airport:

The original air base site owned by the Parish in 1955 consisted of approximately 1,430 acres. This property was donated by the Parish to the United States by Act dated April 7, 1959. (See Exhibit A - certified copy of Act of Donation).

2) Donation of Additional 478 Acres:

One of the conditions imposed by the Air Force in exchange for making Chennault a permanent installation was that the Parish purchase and donate to the United States approximately 791 additional acres of land. A meeting of Parish and Air Force representatives was held on April 5, 1957, regarding the manner and method of acquiring these properties. By letter dated April 17, 1957, the Air Force established priority levels regarding the acquisition of some of these properties. (See attached Exhibits: B-1 - minutes of meeting held on April 5, 1957; B-2 - letter of Air Force).

The Parish began a massive land acquisition program in 1955. Two million dollars was allocated for this purpose alone. When the decision was made to close Chennault more than 478 acres had been acquired and donated to the United States at a cost of over $1.521 million. Additional properties had been acquired by the Parish, but the decision to close the base was made before the donations to the U.S. could be executed. (Note: (1) Properties expropriated by the U.S. were paid for with funds provided by Parish; (2) $1.521 million does not include (a) cost to issue and finance bonds for this purpose; (b) related purchase expenses; or (c) value of Lake Charles Airport. See also Exhibit C - List of Properties Acquired; and Exhibits D-1 - D-37 - copies of acts of donations.)

3) 1525 Acres Affected By S.2031:

Between 1973 and 1977, the United States divided approximately 1,525 acres at Chennault, which included the runways and parking aprons, into separate parcels and conveyed them to the City of Lake Charles, Calcasieu Parish Police Jury, Calcasieu Parish School Board and Sowela Technical Institute subject to educational and recreational use restrictions imposed by the Departments of Education and Interior. 1,250 acres of this land was donated to the U.S. by the Parish. As to the remaining 275 acres:

On November 19, 1951, as a result of a national state of emergency, the U.S. and the Parish entered into a lease of the Lake Charles Airport for temporary use as a command base for the 806th Air Division. This lease was on a year-to-year basis until the state of emergency ended. It was understood that the Air Force had the right to expand the runway system and construct other improvements necessary to accommodate military aircraft and that the U.S. would return the base and any permanent improvements to the Parish at the termination of the agreement.

Sen. Malcolm Wallop, Chairman
Senate Subcommittee on Public Lands,
Reserve Water and Resource Conservation
March 20, 1986
Page Three (3)

The Air Force immediately began expanding the runway system. In connection with this project they purchased 275 acres of land for $59,400.00. This land was used for the north and south extensions of the runway. This was done before the Air Force decided to make Chennault a permanent military base on August 25, 1954. (See Exhibits: E - List of Property Acquired by U.S.; F-1 through F-3 - Copies of Deeds.)

4) Private Sales By U.S. of Donated Property:

In 1961, the decision was made to close Chennault. During 1965-66, the United States sold approximately 330 acres of the land which had been donated to it by the Parish to various private individuals/firms. The total consideration received by the federal government from these sales amounted to $979,718.69. (See Exhibits: G - summary of property donated; H-1 - H-9 - certified copies of Deeds).

5) Remaining 328 Acres of Donated Land:

The remaining 328 acres are owned by individuals and various local government agencies. This legislation does not affect this property.

We have prepared a plat showing the properties donated by the Parish to the United States for the establishment of Chennault Air Force Base. This plat also sets forth a listing of the properties donated to the United States, the properties sold by the United States to private individuals and a list of the properties acquired by the United States for extension of the runway.

B) Mineral Interest of Federal Government:

S. 2031 affects only the restrictions placed on the use of the surface of this property. Neither the City of Lake Charles, the Calcasieu Parish Police Jury, the Calcasieu Parish School Board, nor Sowela Technical Institute intend for this legislation to affect the mineral interest of the federal government in this property. Attached are certificates from these various entities verifying that they understand that this legislation would not affect whatever ownership interest the federal government has or may have in and to the properties affected by this legislation. (See Exhibits J-1 - J-4).

If you, or any member of your Subcommittee, desire additional information concerning the properties affected by S. 2031, please contact us and we will do everything we can to answer your questions.

Respectfully submitted,

Randall E. Roach

Randall E. Roach,
Assistant City Attorney

Enclosures

RER/pp

EXHIBITS

Exhibit A	Duplicate of donation of air base site to United States (original executed April 7, 1959)
Exhibit B-1	Copy of minutes of meeting April 5, 1957, between Parish and Air Force representatives
Exhibit B-2	Copy of letter from Air Force establishing priority of acquisition
Exhibit C	Schedule 1 - properties acquired and donated to United States at request of Air Force
Exhibit D-1 through D-37	Certified copies of acts of donation by Parish to United States
Exhibit E	Schedule 2 - property acquired by United States in 1953
Exhibit F-1 through F-3	Certified copies of deed of property through acquired by United States in 1953
Exhibit G	Schedule 3 - donated property sold by United States to third parties
Exhibit H-1 through H-9	Certified copies of deeds by United States to third parties
Exhibit I	Plat of properties acquired for Chennault Air Force Base
Exhibit J-1 through J-4	Letters from local government regarding mineral interest in property

(Committee Note--Exhibits have been retained in subcommittee files.)

SENATOR BINGAMAN
ALBUQUERQUE, N.M.
[illegible] 32

DANNY LOPEZ
P.O. BOX 433
SOCORRO, NM 87801
(505) 835-0923

MARCH 1, 1986

SENATE SUBCOMMITTEE ON PUBLIC LANDS
WASHINGTON, D.C.

DEAR SIRS:

I REPRESENT A GROUP CALLED, SAVE OUR MOUNTAIN. WE ARE RESIDENTS OF SOCORRO, NEW MEXICO AND WE ARE OPPOSED TO U.S. SENATE BILL 1963 BECAUSE OF THE FOLLOWING REASONS.

NEW MEXICO TECH DOES NOT HAVE A GOOD ENVIRONMENTAL RECORD AND WE SERIOUSLY DOUBT THEIR ABILITY TO PROPERLY CARE FOR THE NATURAL RESOURCES, ECOLOGY, WILDLIFE, AND THE SAFETY OF THE PEOPLE OF SOCORRO IF THE BLM LAND IS TRANSFERRED TO NEW MEXICO TECH AS WRITTEN IN U.S. SENATE BILL 1963.

BETWEEN 1978 AND 1982, NEW MEXICO TECH WAS IN VIOLATION OF NUMEROUS ENVIRONMENTAL LAWS DEALING WITH THE STORAGE AND RECORD KEEPING OF PCB'S.

IN 1983, A WHITE PHOSPHORUS FIRE OCCURRED AT THE TERA TEST SITE. FORTUNATELY FOR THE RESIDENTS OF SOCORRO, THE PREVAILING WINDS BLEW THE HAZARDOUS SMOKE AWAY FROM THE POPULATED AREAS.

NEW MEXICO TECH HAS RECENTLY RECRUITED TWO THE WORST ENVIRONMENTAL POLLUTERS IN THE COUNTRY TO IT'S TERA TEST FACILITY. THESE COMPANIES ARE AEORJET AND HONEYWELL.

THE OFFICIALS AT NEW MEXICO TECH HAVE REPEATEDLY REFUSED TO PROVIDE US, THE CITIZENS OF SOCORRO, WITH AN ENVIRONMENTAL IMPACT STATEMENT.

IT SEEMS THAT NO AGENCY, INCLUDING FEDERAL OR STATE, IS WILLING TO TAKE THE RESPONSIBILITY FOR SUCH A VITAL STUDY.

THE TERA TEST SITE IS ONLY THREE (3) MILES FROM THE MAIN STREET OF SOCORRO.

THE PEOPLE OF SOCORRO ARE BREATHING THE AIR HERE; WE WORRY ABOUT THE BLASTS OF THE EXPLOSIONS AND WE WONDER WHAT IS IN THE FALLOUT THAT COMES FROM THOSE LARGE CLOUDS OF SMOKE.

OUR DRINKING WATER COMES FROM BELOW THE TERA TEST SITE RANGE.

THE NOISE FROM THE EXPLOSIONS ARE VERY IRRITATING AND DETRACT FROM THE QUALITY OF LIFE IN SOCORRO.

SOME OF OUR HOMES HAVE DEVELOPED CRACKED WALLS, STUCCO, PLASTER, AND WINDOWS. THE OLD ADOBE HOMES ARE FALLING APART. COULD THIS DAMAGE COME FROM THE EXPLOSIONS? WE THINK SO!

WHO WILL ACCEPT THE LIABILITY FOR THE PRESENT AND FUTURE DAMAGE TO OUR HOMES?

SOCORRO RESIDENTS HAVE A HIGH RATE OF BREATHING DISORDERS AND CANCER IS COMMON IN OUR COMMUNITY, YET NEW MEXICO TECH REFUSES TO PROVIDE US WITH AN ENVIRONMENTAL IMPACT STATEMENT.

WE ARE A POOR COMMUNITY AND WE NEED JOBS HERE, WE SOMETIMES SIT BACK AND ALLOW INDUSTRY TO COME HERE TO SOCORRO WITHOUT REGARDS TO OUR HEALTH AND ENVIRONMENT. ARE WE ALL WILLING TO TAKE THE RESPONSIBILITY FOR THE HEALTH AND WELL BEING OF FUTURE GENERATIONS AS WELL?

WE LOOK TO YOU, THE LEADERS OF OUR COUNTRY TO MAKE A RESPONSIBLE JUDGEMENT ON U.S. SENATE BILL 1963.

A FIELD HEARING IN SOCORRO, NEW MEXICO MAY HELP YOU MAKE A MORE RESPONSIBLE JUDGEMENT IN AN ISSUE THAT IS IMPORTANT TO US ALL.

RESPECTFULLY SUBMITTED,

Danny Lopez

DANNY LOPEZ

A CONCERNED CITIZEN OF SOCORRO, NEW MEXICO

April 12, 1986

Dear Tom and Stan,

Attached is a letter "for the record" summarizing the problems I have discovered with the language of the bill. A more formal letter on city letterhead will follow. I couldn't find a secretary, so I had to prepare the letter on my home computer. At any rate, this correctly sets forth the nature of the problem.

I sincerely apologize to both of you for the untimeliness of this letter. When these bills were originally drafted, they were intended to authorize the execution of a separate instrument releasing the Chennault properties from the restrictions imposed by HEW and Interior. I had envisioned a separate document which listed, verbatim, the restrictions to be released so that there would not be any question. When we met on Monday, March 24, we agreed to change the language of the bills to simply legislate this release of restrictions.

I had intended to review the amendment in more detail after my trial on Wednesday (March 26). Given the importance of this legislation I realize that I should have reviewed the language before the Senate committee hearing just to be safe.

The amendment which we are suggesting may appear highly technical in nature. However, I have reviewed the problem with several other attorneys not only from a bonding standpoint but also from the standpoint of title purposes, and they all agree that this amendment should be done to insure that we have the flexibility we need to develop the property for industrial purposes.

I want to thank both of you for your patience and assistance in this regard.

Sincerely,

Randall E. Roach

April 12, 1986

Mr. Tom Williams
Senate Subcommittee on Public Lands, Reserve Water and Resource Conservation
Room 312
Dirksen Senate Office Building
Washington, D.C. 20515

Mr. Stan Sloss
House Subcommittee on Public Lands
Room A812
HOB Annex 1
Washington, D.C. 20515

Re: Amendment to H.R. 4022 and S. 2031

Gentlemen:

We have compared the language of the various restrictions imposed by HEW on the properties at Chennault AFB with the provisions of H.R. 4022 and S. 2031, as originally drafted and as amended, and have determined that the provisions of these bills may not be specific enough to allow the Chennault properties to be mortgaged or encumbered for industrial development. The deeds to items 2, 4, 6, X, Y, Z and 9 include the following language:

(1) "If..., the governmental agency wants to resell, rent, lease, mortgage, encumber or otherwise dispose of the property, or any interest therein, the governmental agency must first obtain the written authorization of HEW in accordance with the then existing Departmental Regulations."

Under Louisiana law the term "use or conveyance" would probably not be broad enough to encompass the restriction on the "mortgage or encumber(ance)" of the Chennault property without departmental approval.

We intend to issue some form of bonds or other instruments of indebtedness to finance the industrial development of the Chennault properties as an industrial air park. Under the terms of the issuance of such bonds the properties or some "interest therein" may in fact be "encumbered" to secure repayment. We are concerned that unless the restricton on our ability to "encumber" these properties is specifically addressed in this legislation, we may encounter difficulty in getting approval to issue bonds for this purpose. Our bond counsel is of the same opinion.

In discussing this matter with each of you on Friday, April 11, you both indicated that it was apparent from the record developed thus far that your respective committees intended to release all restrictions on the Chennault properties so that the local owners could develop the property for industrial purposes. To insure that this can be done we would like to ask your assistance in amending each bill to add the word "encumbrance" as follows:

> "The United States hereby releases, without monetary consideration, all restrictions, conditions and limitations on the use, conveyance or encumbrance of certain lands..."

Mr. John Broussard in Congressman Breaux's office (225-2031) has copies of the deeds to these properties if you need them for any reason. We will promptly furnish you with any other information you may need for this purpose.

Sincerely,

Randall E Roach

Randall E. Roach
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(318) 478-7763 (home)